# JUSTICE
# ACTUALITÉS REPORT

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## INTERNATIONAL ISSUE
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CANADIAN CRIMINAL JUSTICE ASSOCIATION •• ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

# JUSTICE
## ACTUALITÉS REPORT

Volume 29 No. / N° 1

The **JUSTICE REPORT** contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact: •• L'**ACTUALITÉS-JUSTICE** renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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# EDITORIAL

**BY JOHN WINTERDYK,** Professor at Mount Royal University, Calgary (Alberta) Canada

This issue of the *Justice Report* represents the first time the publication has dedicated an entire issue to the topic of international/comparative criminal justice. As the Invited Guest Editor, I would first like to thank the CJCA Executive Director, Irving Kulik, and the publication's Editor, Nancy Wright, for enthusiastically supporting and encouraging me to prepare this issue.

In the editorial for 28.3 of the *Justice Report*, Mr. Kulik made reference to this, then-pending, issue and I am honoured to be have been able to arrange it along with the editorial assistance of Ms. Wright.

For this issue, I solicited a truly international cross-section of short articles covering a range of criminal justice issues from virtually all corners of the globe. As is the practice with the *Justice Report*, the articles are limited in length so as to be able to provide a number of concise but hopefully informative and engaging articles.

We have included "full-length" articles (maximum of 2500 words) that include such topics as the prison system in Trinidad-Tobago; youth justice in Namibia; an innovative "fine option program" in England; a look at the unique and arguably innovative prison system in Norway; the situation and challenges of addressing the issue of prostitution in Romania; an account of another novel program for sex offenders in Australia; and one of the first published articles on a transitional justice model developed by a German scholar who has drawn on his research on the genocide in Rwanda, the former Yugoslavia, and other regions of the world. From Canada, we've included an article on an award-winning Community Safety and Crime Reduction Strategy program in Surrey, BC, which was encouraged by an initial investigation into crime reduction in the UK and a growing movement toward similar strategies in such countries as Australia, New Zealand, and the USA. A second Canadian contribution offers a "true story" of the gift of giving within a framework of community involvement in offender rehabilitation. This issue also includes a student article contribution from Germany in which the author examines one of the main challenges confronting the International Criminal Court – standardized international detention practices.

The next issue of the *Justice Report* will include a special international section with articles from Barbados, Germany, and Croatia that we were not able to accommodate here due to space constraints.

As a reader you might ask: "Why a special issue on comparative/international criminal justice issues?" Crime as we know is not unique to Canada. Furthermore, criminal justice and the criminal justice systems around the world also share many of the same challenges and issues as we do in Canada. For example, how do we address the challenges of controlling or preventing certain forms of youth crime (e.g., gangs, bullying, substance abuse, etc.)?

Virtually every country in the world is confronted with defining the role of law enforcement and the challenges of training, use of force, sufficient resources, specialized resources and staff, etc. Meanwhile, from a legal and/or judicial perspective we are also confronted with ensuring due process, protection of human rights, competing legal traditions, the role of the professional actors in the judiciary, etc. Finally, within corrections, very few countries do not have an issue with overcrowding, mental health issues among offenders, a grey inmate population, the use of alternatives such as noncustodial sanctions, restorative justice, etc. Therefore, although this issue does not focus on a comparative analysis of the issues, it does provide a descriptive insight into how some of the issues are or are not being dealt with internationally.

In collecting and selecting the articles for this issue, the overarching objective was to try and offer a varied overview of criminal justice issues and practices from around the world. There are a host of reasons why one might want to look at criminal justice from an international perspective. I will limit the list to three broad and commonly agreed upon reasons: (1) to benefit from the experience of others, i.e., 'lessons learned'; (2) to broaden our understanding of different cultures, different models, approaches, and/or systems; and, (3) the growing need to deal with crimes occurring at a transnational level, e.g., people smuggling and human trafficking, financial crime, cybercrime, illegal drug trade, etc., as these problems confront the world today. This is not always possible or easy, e.g., language barriers; definition barriers as they relate to offence classification, different reporting and recording practices, different information privacy rights, and administrative variations between jurisdictions. Yet, international and comparative criminal justice is becoming increasingly more mainstream.

In closing, we hope you find this issue interesting and informative and would welcome your comments and feedback, as consideration may be given to offering similar 'special' issues in the future focusing on specific themes or topics.

**Please send feedback to ccjapubsacjp@gmail.com**

# ÉDITORIAL

**PAR JOHN WINTERDYK,** professeur à l'Université Mount Royal , Calgary (Alberta) Canada

Pour la première fois, Actualités-Justice consacre un numéro entier à la question de la justice criminelle internationale et comparée. En qualité de rédacteur invité, j'aimerais d'abord remercier le directeur général de l'ACJP, Irving Kulik, et la rédactrice de cette publication, Nancy Wright, de m'avoir appuyé et incité avec enthousiasme à produire ce numéro.

Dans son éditorial, publié dans le vol.28, no.3 d'*Actualités-Justice*, M. Kulik parlait de la présente collaboration, alors en suspens, et je suis honoré d'avoir pu y donner suite avec le soutien à la rédaction de M^me^ Wright.

Pour ce numéro, j'ai sollicité un éventail représentatif d'articles brefs, traitant de toute une gamme d'enjeux de justice en provenance de presque tous les coins du monde. Dans la tradition d'*Actualités-Justice*, la longueur des articles est limitée de manière à pouvoir publier un bon nombre d'articles concis, mais néanmoins informatifs et captivants.

Nous avons inclus de longs articles (d'un maximum de 2500 mots) sur des sujets tels que le système carcéral de Trinité-et-Tobago; le système de justice pour les mineurs en Namibie; un programme novateur de travaux compensatoires en Angleterre; un examen du système carcéral particulier et novateur de la Norvège; l'état de la situation et les défis que soulève la question de la prostitution en Roumanie; un compte-rendu d'un autre programme novateur à l'intention des délinquants sexuels en Australie; l'un des premiers articles à être publié sur l'approche de justice transitionnelle, mise au point par un universitaire Allemand et inspirée de ses recherches sur les génocides au Rouanda, en l'ex-Yougoslavie et d'autres régions du monde. Du Canada, nous avons inclus un article sur la stratégie de sécurité communautaire et de réduction de la criminalité de Surrey (Colombie-Britannique), qui a été stimulée par un examen initial de la réduction de la criminalité au Royaume-Uni et un mouvement vers des stratégies semblables dans des pays, tels que l'Australie, la Nouvelle-Zélande et les États-Unis. Une deuxième contribution canadienne nous présente une *histoire vraie* traitant de la gratification que procure donner dans un contexte d'implication communautaire dans la réinsertion sociale des délinquants. Ce numéro présente aussi un article rédigé par un étudiant allemand qui se penche sur l'un des principaux défis qui confronte la Cour pénale internationale – en l'occurrence, des pratiques standardisées en matière de détention internationale.

Le prochain numéro d'*Actualités-Justice* présentera une section internationale contentant des articles provenant de la Barbade, de l'Allemagne et de la Croatie que nous n'avons pas été en mesure d'inclure dans le présent numéro en raison de l'espace limité dont nous disposons.

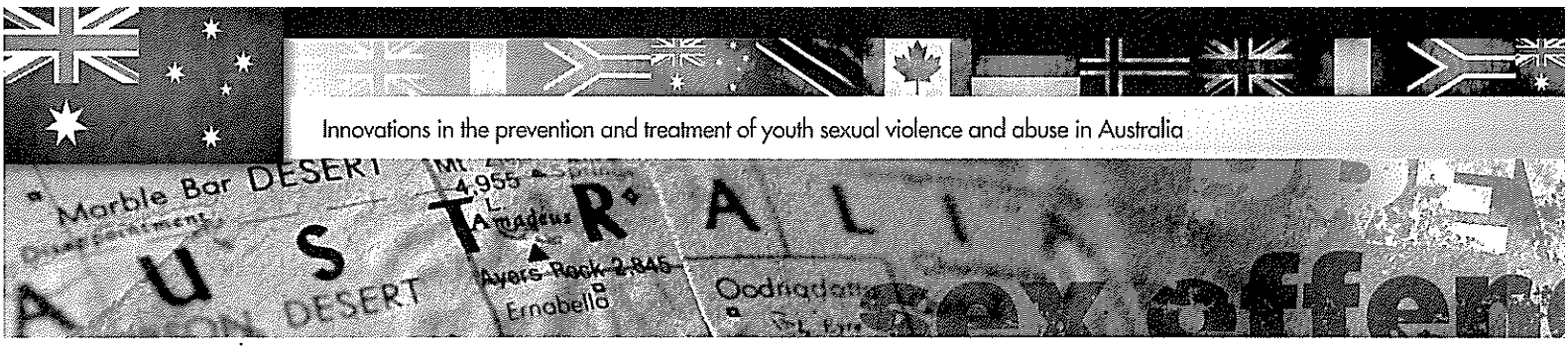
Comme lecteur vous vous demandez peut-être: «Pourquoi publier un numéro spécial sur la justice criminelle internationale et comparée?» Comme nous le savons tous, le phénomène de la criminalité n'est pas propre au Canada. En outre, la justice criminelle et les systèmes de justice criminelle de partout dans le monde ont à composer avec les mêmes difficultés et les mêmes enjeux que le Canada. Par exemple, comment relevons-nous le défi de contrôler ou de prévenir certaines formes de criminalité chez les jeunes (les gangs, l'intimidation, l'abus d'alcool ou d'autres drogues, etc.)?

À peu près tous les pays du monde sont confrontés au défi de définir le rôle de la police et aux défis que posent la formation, l'utilisation de la force, l'insuffisance des ressources, les ressources et le personnel spécialisés, etc. Par ailleurs, d'une perspective juridique ou judiciaire, on doit aussi veiller à l'application régulière de la loi, assurer le respect des droits de la personne, concilier des traditions juridiques qui s'opposent et les approches des divers acteurs professionnels du système, etc. Enfin, dans le domaine correctionnel, rares sont les pays qui n'ont pas à composer avec le problème du surpeuplement carcéral, des problèmes de santé mentale chez les délinquants, une population carcérale vieillissante, le recours à des mesures de rechange telles que des peines non carcérales, des mesures de justice réparatrice, etc. Ainsi, bien que le présent numéro ne mette pas l'accent sur une analyse comparative des enjeux, il présente néanmoins un aperçu de comment on traite ou ne traite pas de certains enjeux sur la scène internationale.

En recueillant et en sélectionnant les articles pour ce numéro, j'avais comme objectif primordial de présenter une vue d'ensemble diversifiée des enjeux et des pratiques de justice pénale dans le monde. Il y a un large éventail de raisons de se pencher sur la justice pénale d'une perspective internationale. Je me limiterai à énumérer trois grandes raisons faisant consensus: (1) afin de profiter de l'expérience des autres, en l'occurrence d'en tirer des leçons; (2) afin d'élargir notre compréhension de diverses cultures, de divers modèles, approches ou systèmes; (3) afin de répondre à la nécessité croissante de s'attaquer à la criminalité transnationale, tel que le trafic d'êtres humains, les crimes économiques, la cybercriminalité, le trafic de drogues illégales, puisque ces problèmes confrontent le monde d'aujourd'hui. Cela n'est pas toujours possible ou facile en raison de barrières linguistiques; de barrières liées aux définitions affectant la classification des délits; de pratiques de déclaration et d'enregistrement différentes; d'information et de droits différents en matière de protection de la vie privée; de variations en matière administrative d'une sphère de compétence à une autre. Pourtant, la justice criminelle internationale et comparée occupe une place de plus en plus importante.

En conclusion, nous espérons que ce numéro saura vous intéresser et vous informer et nous serions heureux de recevoir vos commentaires et réactions, puisqu'il se pourrait qu'on veuille produire d'autres numéros «spéciaux» du genre, centrés sur des thèmes ou des sujets particuliers.

**Veuillez faire parvenir vos commentaires à: ccjapubsacjp@gmail.com**




## INNOVATIONS IN THE PREVENTION & TREATMENT OF

# YOUTH SEXUAL VIOLENCE & ABUSE IN AUSTRALIA

**BY JESSE CALE,** Ph.D., School of Social Sciences, The University of New South Wales, Sydney, Australia

The recognition and concern over the scope and impact of youth sexual violence and abuse is relatively recent. Prior to the 1980s in countries such as Australia, Canada, and the United States, the problem received little attention from professionals. Back-to-justice movements and increased media attention and debates about an apparent explosion in the extent of severity and youth crime in the late 1980s and 1990s played a role in the recognition of youth sexual violence and abuse as an important social issue requiring attention. Indeed, since then, research has demonstrated that youth are responsible for a substantial proportion of sexual violence and abuse committed against adults (e.g., 20% of forcible rape) and children (e.g., 30%-50% of child sexual abuse cases) (see Righthand & Welch, 2001).

### INITIAL RESPONSES TO SEX-OFFENDER YOUTH ISSUES IN AUSTRALIA

One initial response involved adapting adult sex-offender programming to youth. Specialised treatment programs for youth along these lines began to emerge in countries such as Australia, Canada, and the United States in the 1980s and 1990s. For example, individual-based cognitive behavioural therapy and group therapy remain among the dominant treatment approaches to date for youth who commit sexual offences. One key limitation is that programs designed for adults do not account for the dynamic aspect of adolescent development. More importantly, they do not address the crucial roles of family and the environment on youth development and offending behaviour.

### MORE EFFECTIVE TREATMENT MODELS HAVE SINCE EMERGED

More developmentally sensitive/age appropriate and effective treatment models for youth who commit sexual offences have since emerged involving approaches such as multi-dimensional treatment foster care, functional family therapy, and, most prominently, multisystemic therapy (see U.S. Public Health Service, 2001 for a review). One of the common characteristics of these programs is they apply a family-focused and community-based approach to address a wide-range of risk factors related to both sexual and non-sexual offending behaviours.

### SPECIALISED TREATMENT SERVICES PROVIDED IN MOST AUSTRALIAN JURISDICTIONS

Currently in Australia, most jurisdictions provide specialized treatment services for youth who commit sexual offences. Broadly, these can be understood as tertiary crime prevention measures because their key aim is to reduce the likelihood of sexual reoffending. Most programs are structured as centralized services in major cities and delivered in group and clinical settings where the focus remains on individual-level factors (e.g., cognitive behavioural) associated with sexual offending behaviour.

### THE EFFICACY OF CITY CENTRALIZED INTERVENTIONS IN AUSTRALIA

There are a number of important questions surrounding the efficacy of these interventions. The first asks to what extent treatment programs are appropriately targeted and suited to specific offenders' needs beyond individual level factors (i.e., the extent to which they address family & peer risk factors for offending). The second concerns equitable access to services. For example, in Australia, problems of sexual violence and abuse perpetrated by youth are common in many remote Indigenous communities. Furthermore, over approximately half of Indigenous Australians live in outer regional districts or in remote/very remote communities that are scattered across vast distances (e.g., the entire population of the country is approximately 22 million people and is dispersed across an area of 7.7 million km$^2$).

### PROBLEMS IMPOSED BY VAST GEOGRAPHICAL DISTANCES AND CULTURAL DIVERSITY

Added to this, Australia, not unlike Canada, is among the most culturally diverse countries in the world. In other words, vast geographical distances and cultural diversity combined with regional variations in the availability and type of treatment services poses significant challenges in delivering tailoured interventions (especially culturally appropriate ones) for youth who commit sexual offences. A unique clinical service established in 2001

for youth who commit sexual offences in the state of Queensland has made their core practice addressing these often overlooked dimensions of the problem that, in fact, pose perhaps some of the most central challenges for the delivery of effective treatment and interventions for this population.

## THE GRIFFITH YOUTH FORENSIC SERVICE (GYFS)

The Griffith Youth Forensic Service (GYFS), based at Griffith University in Brisbane (also with a satellite office in the northern region of the state located in Cairns), was established in 2001 to provide state wide field-based services for youth aged 10-17 who have plead guilty or been found guilty in court of committing a sexual offence. The service is funded by the Queensland Department of Justice and Attorney-General (Youth Justice Services) in addition to in-kind support from Griffith University. Currently, the service is staffed by a director, manager, two senior clinicians, two clinicians, two researchers, and an administrator.

## GYFS PRIORITIZES HIGH-RISK CASES IN ADDITION TO REMOTE LOCATION REFERRALS

GYFS prioritizes high-risk cases in addition to remote-location referrals. Since 2001, GYFS has served over 400 clients, the vast majority from regional, rural and remote locations (e.g., South West Queensland; Cape York), and approximately one-third of referrals have involved Indigenous youth (for specific referral criteria, see: http://www.griffith.edu.au/criminology-law/griffith-youth-forensic-service/partnerships-and-collaborations). Despite the recognition by official inquiries of high prevalence rates of sexual violence and abuse in some Indigenous Australian communities, GYFS currently remains the only ecological, field-based, clinical-forensic-specialist intervention service for youth who commit sexual offences in Australia.

## THE GYFS MODEL

Considering some of the unique challenges posed by the cultural and geographic diversity of Australia, equitable access to effective specialist treatment for youth who commit sexual offences is one of the primary objectives of GYFS. To address this challenge, service delivery is characterized by three core elements: 1) field-based practice; 2) collaborative partnerships; and 3) individualised, multisystemic assessment and intervention which focuses on addressing a wide range of environmental factors (e.g., family, school, neighbourhood, friends, etc.) that can potentially impact the anti-social behaviour of the offending youth.

## OUTREACH CLINICIANS REGULARLY TRAVEL TO REGIONAL, RURAL, AND REMOTE LOCATIONS

Field-based practice means that clinicians regularly travel to regional, rural, and remote locations, rather than requiring clients and their families to travel to a central clinic (although some clients are seen in a centralised location when appropriate, and in custody settings as well). This often involves multi-day or week-long visits to communities. Therefore, while regular weekly direct involvement is not possible in rural and remote locations, GYFS identifies and recruits teams of local collaborative partners including professionals, paraprofessionals, non-professionals, and in some cases family members, to assist in the development and delivery of treatment services. Importantly, this practice also facilitates a cultural and ecological validity of interventions, and promotes the continuity of service (see Smallbone, Rayment-McHugh, Crissman, & Shumack, 2008).

## THE GYFS TREATMENT MODEL... INDIVIDUALIZED, MULTISYSTEMIC ASSESSMENT AND CASE FORMULATIONS

Three main components characterize the GYFS treatment model. The first is an interdisciplinary approach. The GYFS treatment model is based on a wide spectrum of theoretical knowledge including developmental, social, forensic, and clinical psychology; developmental criminology; evolutionary theory and neurobiology; social ecology, environmental criminology (for a theoretical overview see Smallbone and Cale, 2013; Smallbone & Rayment-McHugh, 2013). This diverse theoretical basis provides the foundation for individualized, multisystemic assessment and case formulations. More specifically, assessment and case formulations focus on the ecological and situational context of the sexual offending behaviour of each client, their developmental backgrounds, related risk and protective factors, individually tailoured treatment goals, and ecological audits to identify the most pertinent local resources and their availability.

The latter focus is the second key component of the treatment model. Trained clinical staff engage in what can be understood as comprehensive environmental assessments, or 'ecological audits', to identify individuals in a young person's surrounding and immediate environment that can assist in promoting positive outcomes for them. For example, this may include developing collaborative partnerships with youth justice or child protection officers, mental health practitioners, teachers, youth workers, and alternative care providers.

## SUPPORTING YOUTH THROUGH THE PROCESS: A STORY OF COLLABORATIVE PARTNERSHIPS THAT MAY EVEN INCLUDE FAMILY MEMBERS

Importantly, however, this may also include Indigenous community elders, other community stakeholders, and even family members when appropriate (see Smallbone et al., 2008b). In effect, the key goal is to identify individuals who will aid in supporting the youth through the treatment process. For example, in several cases involving Indigenous youth, this has involved the assistance of cultural consultants, community partners, and family members to ensure cultural norms and protocols are respected throughout the delivery of treatment.

## INDIVIDUALIZED - *INDIVIDUAL* - TREATMENT

Finally, the provision of treatment is based specifically on the principles of multisystemic therapy with individual clients. Group therapy is not utilized by GYFS because a large proportion of their clients demonstrate significant antisocial behavioural problems. Taken

together, the treatment provided by GYFS is characterized by a balance of individual, family, and community level interventions that are uniquely tailoured to each client.

## THE ROLE OF CLINICIANS IN PRIMARY AND SECONDARY CRIME PREVENTION MODELS

The unique properties of the service delivery and treatment model that characterize GYFS have opened the door for clinicians to play a central role in primary and secondary crime prevention. Indeed, this is another innovative aspect of the service; the work of forensic psychology practitioners in this field has and still does primarily involve tertiary crime prevention (e.g., the prevention of sexual recidivism). Through field-based practice, engaging with clients and their families in their homes and communities has led to the identification of endemic problems of youth sexual violence and abuse in two particular locations in the state. As a result of these discoveries, the nature and scope of GYFS clinical practice has been extended to place-based primary and secondary prevention of youth sexual violence and abuse.

## FOUR KEY TARGETS OF THE CRIME PREVENTION MODEL

In this context, the crime prevention model involves four key targets: (1) identifying offenders or potential offenders; (2) identifying victims or potential victims; (3) identifying situations or specific settings in which sexual violence and abuse has occurred or is likely to occur; and (4) engaging the broader communities across three prevention levels (primary, secondary, and tertiary prevention) (see Smallbone et al., 2008a; Wortley & Smallbone, 2006). Currently, GYFS clinicians are involved in large-scale crime prevention projects that have emerged in the course of their clinical work with individual clients in specific communities. This serves as a clear demonstration of the role clinical forensic practitioners can occupy in the wider crime prevention agenda.

## INTEGRATION OF CLINICIANS AND RESEARCHERS CONTRIBUTES TO EVIDENCE-BASED APPROACH

GYFS is situated at Griffith University in the Key Centre for Ethics, Law, Justice and Governance and therefore operates as part of a broader program of research and practice. This allows for the effective integration of clinicians and researchers and substantially contributes to an evidence-based approach that characterizes the GYFS model. Clinicians actively engage in research, and researchers routinely work with clinicians to analyse clinical data. As a result, this produces an increased capacity for community outreach and training and information seminars that GYFS provides for professional and community stakeholders.

In addition, this also substantially facilitates the dissemination of research to broader professional outlets (e.g., the Association for the Treatment of Sexual Abusers, *ATSA*; the Australia and New Zealand Association for the Treatment of Sexual Abusers, *ANZATSA*; the International Association for the Treatment of Sexual Offenders, *ATSO*; the American Society of Criminology, *ASC*) and in-house capacity for the development and analysis of performance indicators and service delivery.

## CONCLUDING REMARKS

The GYFS model is an innovative and unique ecological, field-based clinical forensic practice, in Australia, and globally. It should therefore not be surprising that there are substantial financial and logistical challenges associated with the provision of this level of service. The challenges, however, extend beyond the logistics of the service delivery and prevention/treatment model. A critical yet often less acknowledged aspect of this level of service is the time and effort that go into building foundations that sustain long-lasting collaborative relationships. This is a particularly pertinent issue in terms of Indigenous communities and families. The colonial history of Australia, as in Canada and the United States, has created cultural barriers that are continuously challenging to surmount, especially regarding sensitive issues such as youth sexual violence and abuse. Overcoming these barriers requires a significant commitment from practitioners and is crucial for success; and, as is apparent in the case of GYFS, doing so successfully can take years.

The Griffith Youth Forensic Service serves as an exemplar model for innovation in the prevention and treatment of youth violence and sexual abuse, and is one with considerable merit and potential for a country like Canada given the many social, economic, political, and historical parallels between the two countries. ••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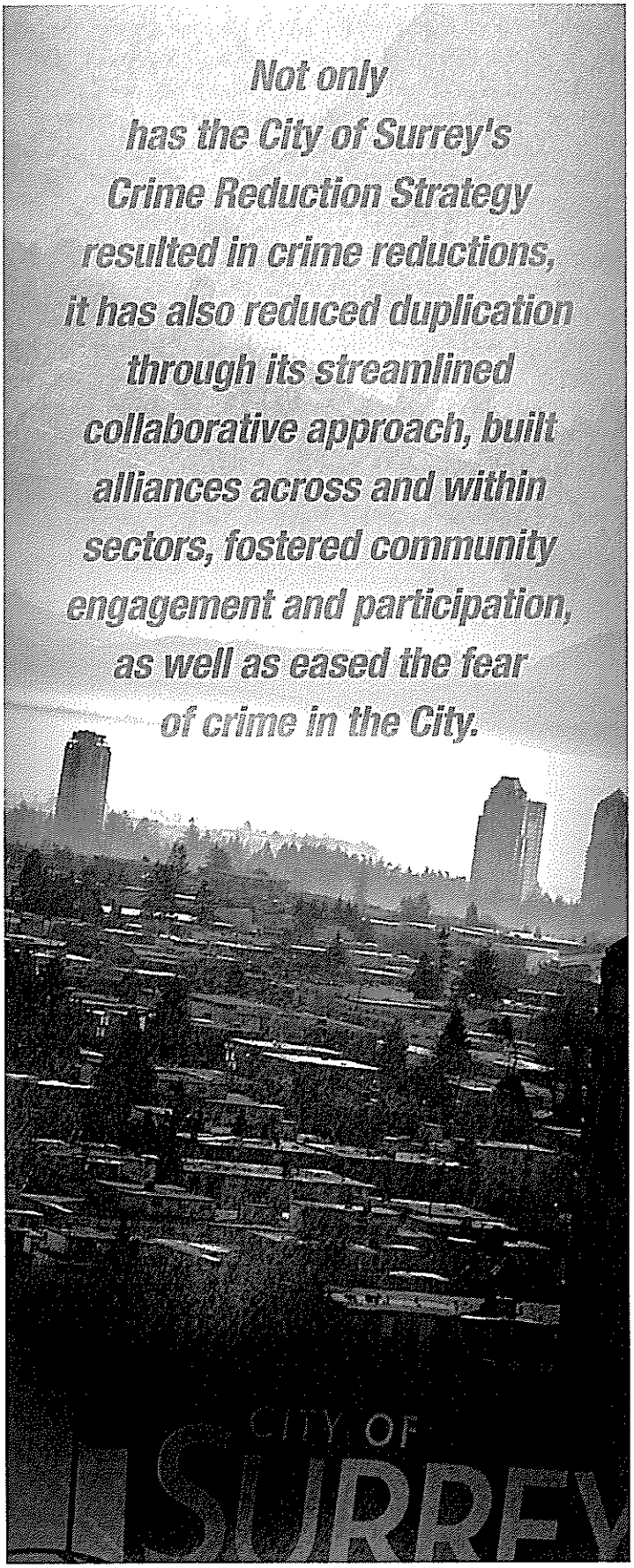
## RÉSUMÉ

### INNOVATIONS IN THE PREVENTION & TREATMENT OF YOUTH SEXUAL VIOLENCE & ABUSE IN AUSTRALIA

Par Jesse Cale, Ph.D., School of Social Sciences, The University of New South Wales, Sydney, Australie

Dans cet article, Jesse Cale met en lumière certaines recherches récentes démontrant que de 20 % des viols par contrainte, perpétrés contre des adultes, et de 30 % à 50 % des agressions sexuelles perpétrées contre des enfants sont imputables à des jeunes. Cale souligne que le problème existait déjà, mais qu'il n'avait pas retenu l'attention de professionnels avant les années 1990 et il fait ressortir les efforts déployés par l'Australie pour lutter contre ce grave problème. On a dans un premier temps adapté aux jeunes la programmation destinée aux délinquants sexuels adultes, puis subséquemment mis en œuvre des modèles de traitement plus convenables, plus efficaces et plus équitables, mieux adaptés à l'âge et au stade de développement des délinquants en misant sur des approches communautaires, axées sur la famille. Cale se réjouit de la mise en place du Griffith Youth Forensic Service (GYFS), créée dans le but d'offrir à l'échelle du pays des services de terrain à l'intention de jeunes âgés de 10 à 17 ans ayant plaidé ou ayant été trouvés coupable d'un crime à caractère sexuel. L'un des principaux objectifs du GYFS est d'assurer que les jeunes ont un accès équitable à des traitements spécialisés à l'intention de jeunes ayant commis un crime à caractère sexuel, une approche qui, selon l'auteur, pourrait s'avérer utile et prometteuse pour le Canada, compte tenu des nombreux parallèles existant entre les deux pays sur les plans social, économique, politique et géographique.




# THE CITY OF SURREY, BC'S CRIME REDUCTION STRATEGY:
## A BEST PRACTICES MODEL FOR COMMUNITY SAFETY AND CRIME REDUCTION

BY COLLEEN KERR AND JACKI TOKARYK

**The City of Surrey is one of the fastest growing municipalities in Canada, with an estimated 1200 new residents moving to the City per month. The City is the largest by land mass, and the second largest city by population in BC. In 2006, Mayor Watts spearheaded the development of the award-winning Crime Reduction Strategy (CRS) to tackle root causes of crime through a partnership driven, problem-solving approach.**

### THE CITY OF SURREY'S CRIME REDUCTION STRATEGY (CRS)

The success of Surrey's CRS has depended upon the concerted efforts and collective input of numerous stakeholders across the City. This collaborative involvement, of Surrey RCMP, Surrey Fire Service, over 50 community groups, hundreds of individuals and all three levels of government has been the mainstay of this extremely effective strategic approach. The Strategy is a living document in the sense that its 106 recommendations continue to be implemented and its programs help foster new partnerships and create innovative programs to address crime, nuisance behaviour and social challenges.

Surrey's CRS has the four primary objectives of (1) reducing crime and increasing community safety; (2) increasing public involvement in reducing crime, (3) increasing integration between all stakeholders; and, (4) improving public awareness of reality vs. perception of crime. These objectives are further broken down into the following four strands: Prevent and Deter Crime, Apprehend and Prosecute Offenders, Rehabilitate and Reintegrate, and the Reality and Perceptions of Crime, which together offer 106 specific recommendations. Not only has the Surrey's Crime Reduction Strategy resulted in crime reductions, it has also reduced duplication through its streamlined collaborative approach, built alliances across and within sectors, fostered community engagement and participation, as well as eased the fear of crime in the City.

### AWARD-WINNING STRATEGY - A STORY OF SUCCESS!

**The City was awarded the BC Ministry of Public Safety and Solicitor General's 2011 Crime Prevention and Community Safety Local Government Award** for the **Strategy**, and specific components received additional recognition through local awards, including Surrey Board of Trade's Police Officer of the Year which recognizes projects, teams and individuals making a difference in

the community. For its support of the Strategy, the Surrey Crime Prevention Society was the recipient of the **Canadian Criminal Justice Association's 2013 Crime Prevention Award,** presented at the Association's **34th Canadian Congress on Criminal Justice**, held in October, 2014 in Vancouver, British Columbia.

### Expansion of Surrey's Crime Reduction Strategy (CRS) Model as a Best Practices Model

In September, 2012, a provincial delegation from the City of Prince George, BC came to Surrey to learn more about its innovative CRS, its implementation and successes. Prince George began to develop its own crime reduction strategy in 2013. In November 2012, the National Crime Prevention Centre in Ottawa requested Surrey host an international delegation from Israel to showcase our successes.

## KEY ACHIEVEMENTS / SPECIFIC STAKEHOLDER COLLABORATIONS

The City of Surrey has a number of stakeholder collaboration endeavors that it considers key achievements of its CRS.

### Substance Use Awareness Team (SUAT)

In 2011, the City of Surrey began a very successful multi-partnership committee on substance use, organizing Substance Use Awareness Week (SUAW) with 14 partners. After the 2012 Awareness Week, the SUAW Committee expanded its role and name to Substance Use Awareness Team (SUAT), bringing together experts to partner on initiatives that create awareness and educate the public about substance use, gambling and process addictions, and empower youth against substance use. Collaboration, community and best practices are key words of Surrey's Crime Reduction Strategy.

### Multi-Agency Response – Metal and Wire Theft Prevention / Education

The City of Surrey also chairs an Inter-Agency Wire Theft Committee with representatives from Surrey RCMP, TELUS, BC Hydro, Cobra Electric, the Ministry of Justice – Police Services, Ministry of Transportation and Infrastructure, Surrey Crown Counsel, Canadian National Rail Police, Rogers, Shaw, as well the related City departments, including Crime Reduction, Legal Services, Engineering, Fire Services and the Bylaw Enforcement Division. Thanks to the efforts of this Multi-Agency Team, Bill 13 - the Metal Dealers and Recyclers Act, was introduced by Solicitor General in the BC Legislature and the resulting legislation came into force on July 23, 2012 making BC the first Canadian province with legislation targeting scrap-metal transactions. A number of training sessions, including one for Scrap Metal Dealers, have also been developed and successfully implemented. The Interagency Wire Theft team was presented with the **Arnold Silzer Community Policing Award** at the **Surrey RCMP Police Officer of the Year awards** in October, 2012.

### Action on Domestic Abuse via the CRS & The Rakhi Project

The Strategy has developed domestic abuse initiatives that include prevention-specific education, & improved networking and collaborative working relationships among service agencies and stakeholders. This led to the formation of the Surrey Coalition Against Domestic Abuse (SCADA) and the implementation of the Rakhi Project, in 2011 to raise public awareness, raise funds, and create partnerships to combat domestic abuse. Rakhi is a tradition in India involving the tying of a rakhi (thread) by a sister on her brother's wrist, an important intercultural tradition now extended to all communities of Surrey and globally via the City of Surrey's CRS.

### Developmentally disabled youth and young adults

An initiative designed to help prevent developmentally disabled youth and young adults from becoming involved with the justice system also assists them with various justice partners if a justice response is required. The future goal of the initiative is to develop a broader education program that includes accessibility to a "legal advocate" or mentor. ••

REFERENCES AND KEY DOCUMENTS

Original Strategy: http://www.surrey.ca/community/8397.aspx

2007 – 2010 Progress Report: http://www.surrey.ca/community/8397.aspx

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2012 Annual Report: http://www.surrey.ca/community/8397.aspx

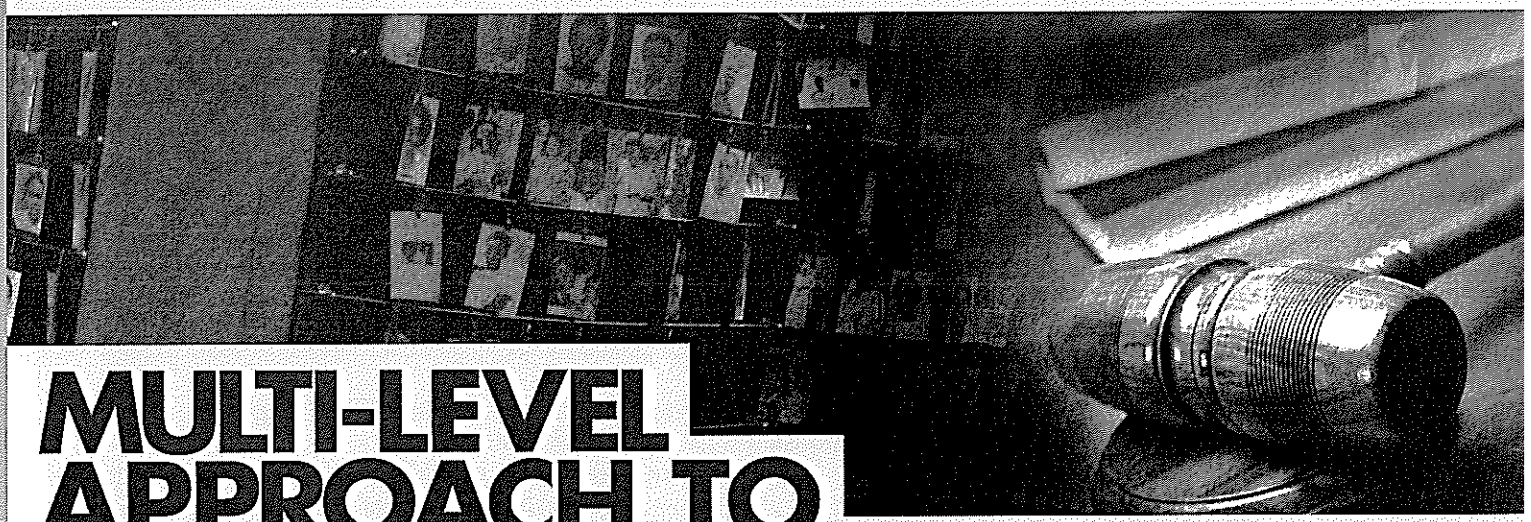
Website: www.surrey.ca/crimereduction

## RÉSUMÉ

**THE CITY OF SURREY, BC'S CRIME REDUCTION STRATEGY (CRS): A BEST PRACTICES MODEL FOR COMMUNITY SAFETY AND CRIME REDUCTION**

Par Colleen Kerr et Jacki Tokaryk

La Ville de Surrey s'est vu décerner le Prix de prévention du crime et de sécurité communautaire 2011 du ministère de la Sécurité publique et du Solliciteur général de la Colombie-Britannique, dans la catégorie des gouvernements locaux, pour sa Stratégie de réduction de la criminalité (SRC); certaines composantes particulières de la SRC ont également été primées par des instances locales. Non seulement la SRC a-t-elle contribué à une baisse de la criminalité, elle a aussi permis de réduire les dédoublements par le biais d'une approche de collaboration simple et rationnalisée, en créant des alliances entre et au sein des divers secteurs, en favorisant l'engagement et la participation communautaire, de même par une gestion de projets destinée à réduire la peur du crime dans la ville. La SRC compte plusieurs réalisations clés: la création d'une équipe de sensibilisation aux conséquences de la consommation d'alcool et d'autres drogues; la constitution d'une équipe d'intervention inter-agences axée sur la prévention et l'éducation en matière de vols de métaux et de fils de cuivre; certaines actions visant à contrer la violence familiale par le truchement des projets SCADA et Rahki; des programmes de prévention et de mentorat à l'intention de jeunes et de jeunes adultes handicapés par un retard du développement. En reconnaissance de l'appui accordé à la Stratégie, la Société de prévention du crime de Surrey a reçu le Prix de la prévention du crime de l'Association canadienne de justice pénale, remis dans le cadre du 34e Congrès de justice pénale de l'Association, tenu en octobre 2014, à Vancouver (C.-B.).



# MULTI-LEVEL APPROACH TO TRANSITIONAL JUSTICE

**BY DR. NANDOR KNUST,** Head of the International Criminal Law Section of the Max Planck Institute for Foreign and International Criminal Law, Freiburg i. Br., Germany

Mass violence or repression doesn't just affect individuals – it can also affect society as a whole. Besides satisfying the needs of the individual victims of these atrocities, the State – and the international community as a whole - has an obligation to not only prevent these kind of crimes but to guarantee peaceful coexistence and generate confidence in the rule of law within its boundaries. Therefore, aside from the creation of individual responsibility with respect to such human rights violations, the State is obliged to make reforms and establish mechanisms to re-establish trust in the State authorities.

## WHAT IS TRANSITIONAL JUSTICE?

Transitional justice is a comparatively new discipline in research and literature. History shows a variety of reactions to ongoing conflicts or in the aftermath of mass violence and massive human rights violations in an effort to (re)build "civic trust in state institutions as protectors of human rights" (ICTJ, 2014).

Transitional justice can be seen as a discipline founded on law, political science, sociology and criminology. Teitel (2003) defines transitional justice as a "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (S. 69). In a report by the Secretary-General of the United Nations concerning "the rule of law and transitional justice in conflict and post-conflict societies", the Secretary-General states that "[t]he notion of transitional justice discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" ( S/2004/616 23. August 2004).

## HISTORICAL DEVELOPMENT OF TRANSITIONAL JUSTICE: THE THREE MAIN PHASES

Following Teitel, the historical development of transitional justice can be divided into three main phases. The first phase began with the aftermath (after effects) of World War I, but became fully developed during the postwar phase of World War II with the establishment of the International Military Tribunals in Nuremberg and Tokyo. The second phase can be traced to the (Post-) Cold-War phase, which is associated with the modernization and democratization efforts taking place after 1989. The third phase started at the end of the 20th century, a period characterized by persistent conflicts during which transitional justice shifted from exception to norm alongside the development of a more permanent international legal system that peaked with the establishment of the International Criminal Court in 2002.

## PLURALITY OF TRANSITIONAL JUSTICE MODELS AND MECHANISMS

Over the years a plurality of transitional justice models and mechanisms were developed with different aims and goals. Though the various models were based on different building blocks and legal procedures, including procedures of a national, non-national, or mixed national and non-national nature (Knust, 2013) they share the following problems:

- **An immense quantity of possible perpetrators;**
- **a lack of resources and infrastructure in war-torn countries;**
- **a need to create accountability in order to overcome impunity; and,**
- **a need to establish mechanisms for reconciliation at the national and individual levels.**

## THE CASE OF THE RWANDAN GENOCIDE

These fundamental challenges apply equally to the case of the Rwandan genocide. In 1994, nearly one million people were killed within 100 days. The victims were mostly Tutsis and moderate Hutus. In the aftermath these crimes were prosecuted by three different legal systems: the international, the national and the (neo-) traditional. All three systems were the subject of numerous research projects; however, a multi-level approach to transitional justice, predicated on a combination of the various types of procedures of each system, i.e., international, regional, national and local, has until now been missing from the literature.

"Strafrecht und Gacaca", i.e., *criminal law and Gacaca* (Knust, 2013) is the first work to compare these three systems, established in the aftermath of the Rwandan genocide. Knust's dissertation examined whether a combination of the three systems could be seen (and actualized) as one pluralistic model of transitional justice, one that would facilitate a more comprehensive mode of operation during the transition phase in Rwanda. The benefits of using a pluralistic approach to transitional justice are possible due to the development of mechanisms such as are required to satisfy the needs of the affected (i.e., international, national and local) communities. Such mechanisms take the form not only of political and legal structures and institutions, but socio-economic ones as well.

## THE THREE SYSTEMS

### 1. International System: United Nations International Criminal Tribunal for Rwanda

In 1994, the United Nations Security Council adopted resolution 955 establishing the International Criminal Tribunal for Rwanda (ICTR). The ICTR is an international criminal tribunal located in Arusha, Tanzania, a country neighboring Rwanda. The staff working at this tribunal is of an international character. As in the case of the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY), the ICTR was established to stabilize the region, establish peace and guarantee a peaceful transition phase. The material jurisdiction of the ICTR comprises the crime of genocide, crimes against humanity and war crimes (Common Article 3 of the Geneva Convention). The temporal jurisdiction of the ICTR is limited to the year 1994. Contrary to the International Criminal Court (ICC) – which acts as a complementary court, i.e., a court of last resort – the ICTR has concurrent jurisdiction with other courts to ensure that the masterminds and persons who orchestrated the Rwandan genocide are put to trial in front of the ICTR. Thus far, the ICTR has dealt with 75 cases. 47 people have been sentenced to various terms of imprisonment, including some life sentences, 12 people were acquitted, and 16 cases are pending appeals. An additional 10 have been transferred to the national courts (Rule 11 *bis* of the Rules of Procedure and Evidence).

***Only through the use of a combination, a plurality, of the systems in place at the different levels may the necessities and needs of a post-conflict-society be addressed correctly.***

### 2. National System: Rwandan Military Courts / Specialized Chamber

At the national level, specialized chambers and military tribunals were integrated into the national courts. This system specifically established for the crimes of the Rwandan genocide, is based on *loi organique* No. 8/96, (Organic Law), a specific constitutional law designed to include the crimes of genocide and crimes against humanity. According to its temporal jurisdiction, it is limited to crimes occurring between 1 October 1990 and 31 December 1994. Even though in 1994 the *Rwandan Penal Code* did not codify the crimes of genocide and crimes against humanity, the Rwandan judiciary uses the terms "genocide" and "crimes against humanity" when the crimes under consideration fulfill the conditions set forth for "normal" murder, torture and other such crimes in accordance with the Rwandan Penal Code and were committed with the special intention of destroying a specific group as a whole (genocide), or as a widespread or systematic attack against the civilian population (i.e., crimes against humanity). This use of a specific constitutional law ensured non-violation of the principle of non-retroactivity of criminal law also meant those convicted would not face the death penalty (Rwanda abolished the death penalty in 2007) as would be the case under the *Rwanda Penal/Criminal Code.*

### 3. *Local/(Neo-) Traditional System: Gacaca* - Conflict Resolution Mechanisms

Owing to the functional limits of the Rwandan national criminal justice system and the fact that the use of the 'national' system would have taken more than 100 years to deal with all perpetrators, in 2001 the Rwandan Government (re-)established an additional system, the 'Gacaca court system'. This system evolved from the traditional Gacaca, customary conflict resolution mechanisms that operated in the small local communities of Rwanda. These 'traditional' Gacaca operated without any State intervention, with and the norms and rules passed on orally from one generation to the next. Conversely, the newly 're-established' Gacaca are operating under State control and integrated into the national state legal system. Additionally, the procedure of the new Gacaca contains elements of modern criminal procedures, such as dossiers and an appeals' procedure. The main aim of these 'neo-traditional' Gacaca has been to accelerate procedures in order to overcome the problems posed by the detention of hundreds of thousands of

suspects. The Gacaca courts were established individually down to the very smallest administrative unit of the state of Rwanda – known as the *cellule*, or "cell". More than 8,000 Gacaca courts were operating in Rwanda.

**THE NATIONAL AND NEO-TRADITIONAL SYSTEMS SHARE TWO KEY MECHANISMS:**

1. A **guilty plea mechanism** allowing accused persons to confess their acts in return for a reduction in sentence. This mechanism helps speed up procedures and leads to quicker judgments. Additionally, this mechanism provides for a restorative justice component because the person confessing is required to clarify what happened during the genocide and must apologize to the victims and his/her local community. Through this mechanism, victims officially receive the status of witnesses in their local communities.

2. A **categorization mechanism** which divides accused persons into three different categories of perpetrator:

   **Category 1**: The planner and organizer of the Rwandan genocide and perpetrator of the cruelest crimes.

   **Category 2:** Perpetrators of murder and very cruel crimes.

   **Category 3:** Perpetrators of crimes against property.

   The categorization of an accused person decides whether the national or the local system has jurisdiction over the case. Perpetrators in Category 1 fall under the jurisdiction of the national system and may receive a reduced sentence for a confession and/or implication of others, while Category 2 and 3 perpetrators fall under the jurisdiction of the Gacaca. This categorization mechanism distributed a rationalization program to overcome the flood of suspects.

In the case of Rwanda, all three systems, while sharing similar aims and goals and following the same criminal policy, use different approaches to reach these aims as they operate in different local spheres of action. Therefore, the procedural configuration and modes of action are virtually diametrically opposed to each other.

**IMPLICATIONS OF THE PLURALISTIC MODEL**

At a broader international level, a system involving persons unaffected by the conflict operates vis-à-vis a bureaucratic mechanism with fixed rules and procedures to produce a fair, impartial and comprehensible result/decision. Overall, this system is very limited in its quantitative capacities because its forensic approach is resource-intensive and time-consuming.

At the national level a system also based on strict bureaucratic rules was established. In this system, professional staff use strict procedures in order to deliver a reasonable and fair result. This system was challenged by a lack of highly educated personal, because most of the lawyers and judges were killed or fled the country during the time of the genocide. This lack of professionalism was clearly noticeable during the first years after the (re-)establishment of the system, with people being arrested without any clear evidence or proof. This resulted in heavily overcrowded prisons in which thousands of detainees died as a result of poor prison conditions.

At the local level, a system also based on written administrative rules is operating. However, all parties to the procedure are also directly affected by the conflict. Within this procedure, the interaction between all parties plays a vital role. This system does not have a prosecutor. Moreover, the entire population of the "cell" collects evidence and testimonies during the procedure to create cases and indict persons for their actions during the Rwandan genocide. Based on this evidence collection, the entire "cell" population discusses the individual responsibility of the accused persons. Through the interaction and discourse between everyone in the "cell" – including victims, witnesses and perpetrators – a communication platform and restorative dialogue is created.

**Chart 1: Comparative overview of the three systems**

| | INTERNATIONAL | NATIONAL | LOCAL |
|---|---|---|---|
| AIMS | • End impunity<br>• Reconciliation<br>• Truth<br>• Justice | • End impunity<br>• Reconciliation<br>• Truth<br>• Justice | • End impunity<br>• Reconciliation<br>• Truth<br>• Justice |
| JURISDICTION (CRIMES) | • Genocide<br>• Crimes against humanity<br>• War crimes | • Genocide<br>• Crimes against humanity<br>• National crimes (murder/sexual violence) | • Genocide<br>• Crimes against humanity<br>• National crimes (murder/sexual violence) |
| SELECTION OF CASES | Planners and organizers of the Rwandan genocide | • Organizers of the Rwandan genocide<br>• Very cruel perpetrator | Remainder of the perpetrators |
| PROCEDURE | Adversarial (sui generis) | Inquisitorial (sui generis) | Mediated popular justice (sui generis) |

Source: Knust (2013)

Nevertheless the bench of the Gacaca – the so called *Inyangamugayo* – decides on the guilt of the accused person and delivers the judgment and sentence. Nonetheless, at the local level the element of restoration is the main focus of the procedure, with the creation of individual (criminal) responsibility playing a subordinate role. A summary of the three models and their characteristics is provided in Chart 1.

## A PLURALISTIC MODEL OF TRANSITIONAL JUSTICE

Based on the comparative analysis above, it is clear that the three systems share the same aims, but their respective understanding of these aims is different. Every level has different needs and requires a system with a specific procedure to satisfy those needs. Under such circumstances, it is clear that the pursued objectives may only be achieved by means of a pluralistic model of transitional justice.

Only through the use of a combination, a plurality, of the systems in place at the different levels may the necessities and needs of a post-conflict-society be addressed correctly. At the local level, the individuals (i.e., victims, perpetrators, etc.) have different needs – such as individual reconciliation and restoration – than those at the national level, where the focus is clearly geared more towards the re-establishment of a governmental structure and institutions to guarantee social order and peace within national boundaries. At the international level, the strict use of the rule of law and international standards plays a vital role and must be respected to bring to justice those perpetrators having committed international crimes affecting the international community as a whole. Only through the use of a plurality of mechanisms established after an evaluation of the entire post-conflict situation may there be an effective and appropriate response to mass violence.

The establishment of a pluralistic model of transitional justice should therefore be kept in mind for future cases of mass atrocities/human rights violations in order to address the special needs and concerns at the different levels. Only by respecting the needs of individuals as well as the needs of the establishment and a confirmation of state institutions is it possible to guarantee an effective and sustainable transition phase and, through the resulting nexus of development, create desirable conditions and impetus for a peaceful and stable future.••

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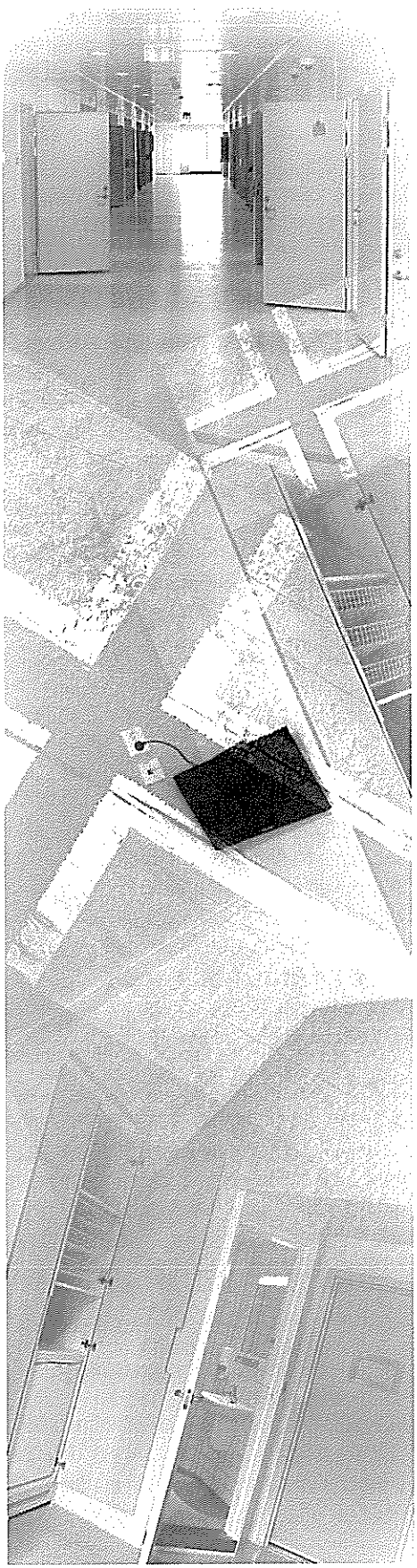
## RÉSUMÉ

**MULTI-LEVEL APPROACH TO TRANSITIONAL JUSTICE**

Par Nandor Knust, Ph.D., chef de section de l'Institut Max Planck de droit pénal étranger et international de Freiburg i, Allemagne

Dans le cadre de la phase d'après conflit du génocide au Rouanda, objet de sa thèse de doctorat, Nandor Knust plaide de nouveau en faveur d'une approche de justice transitionnelle à multiples niveaux. Voulant expliquer et décrire la pluralité des approches et des mécanismes de justice transitionnelle au Rouanda, l'auteur a mis au point un modèle explicatif fondé sur trois niveaux de systèmes qui entrent en jeu pendant la période d'après conflit ou de transition. Au niveau local, les victimes, les auteurs de crimes, et autres ont besoin de réconciliation et de réparation sur le plan individuel. Au niveau national, l'accent est mis sur le rétablissement des structures et des institutions gouvernementales qui assureront l'ordre social et la paix à l'intérieur des frontières nationales. Au niveau international, l'application stricte de la primauté du droit et de normes internationales joue un rôle vital pour traduire devant la justice les auteurs de crimes internationaux qui ont des incidences sur la communauté internationale tout entière. Dans le but de répondre aux besoins et préoccupations propres aux divers niveaux, Nandor Knust prône donc l'adoption d'approches pluralistes de justice transitionnelle pour les cas d'atrocités de masse qui pourraient se produire dans le futur.



Inside a cell in Halden prison. (Reuters)

# THE PRISON SYSTEM IN NORWAY: A SOFT OPTION?

**BY GERHARD PLOEG,** Ph.D., Senior Adviser, Directorate of Correctional Services of Norway

**In the aftermath of the terrorist crimes committed on the 22nd of July, 2011, the Norwegian correctional system has attracted considerable international attention. The international media became interested not only in why the Norwegians responded as they did, but also in the system of punishment and its underlying principles. Why was there no general outcry for the death penalty for a man who had shot and killed 69 people, almost all of them children, after having blown up the offices of the Prime Minister and the Ministry of Justice, killing eight people? What kind of punishment would he receive?**

**Sentencing and imprisoning practice in Norway became a hot topic. Most of those who reported on the issue were arguably perplexed and intrigued by the comparatively short sentences and the general climate in the prisons. Several major media outlets zeroed in on this and regularly showed images of prisoners roaming freely with cows or sunbathing on the prison island of Bastøy, or playing guitar in the studio at Halden prison.**

**An understanding of this situation may be gained by taking a look at the leading principles in Norwegian corrections and the potential results of actions taken in accordance with them.**

## THE PENAL CLIMATE

As in many Western European countries, general crime rates in Norway have been falling for the past two decades, while violent offences have increased. These developments have had no overall effect in terms of more or longer prison sentences. In 2011, over 60% of all unconditional prison sentences were three months or less, and almost 90% were less than a year. Compared to Canada's 118 per 100,000 or the USA's prison population rate of 716, Norway has a comparatively low rate at 72 per 100,000.[1] Norway has around 3,800 cells in 43 prisons, spread over 61 locations. Almost two-thirds of these are in lower-security or "open" prisons, and there are currently seven half-way houses where specific offenders can serve the last part of their sentence. Open prisons have a lower prisoner-staff ratio and many of the prisoners work outside the premises during the daytime. Half-way houses are situated in residential areas and the offenders are either always working or furthering their education during the day.

### Correctional Services of Norway (CSN) vision and mission

The Correctional Services of Norway (CSN) is responsible for carrying out remands in custody and penal sanctions in a way that takes into consideration public safety and attempts to prevent recidivism by enabling offenders to change their criminal behavior. The CSN's main challenge is finding the right balance between these equally important aspects.

### CSN organization and structures

CSN consists of both prisons and probation offices. There is shared management at the central and regional levels, while single unit facilities also exist, each under their own lo-

[1] www.prisonstudies.org/info/prisonbrief

cal management. Prison and probation offices co-operate, especially in the case of prisoners being released 'on license', i.e., on parole, but there may also be other forms of collaborating that should be considered for other stakeholders. Because Norway is a relatively large country and characterized by great distances, there are many relatively small prisons spread throughout the country. The largest prison is in Oslo and has nearly 400 cells, the smallest prisons have about 12 and the average number of cells is around 70. In 2011, 10,306 prison admissions were registered.[2]

**Staffing of Norwegian prisons**

Prison staff in Norway receive a two-year training at the Staff Academy, making it one of the most extensive programs in the world. Completing the training awards study points that may be used towards a Master's degree. The curriculum is, *inter alia*, focused on criminology, psychology, law, human rights, and ethics.

Every prisoner is assigned a contact officer who assists the prisoner for and during contact with third parties such as service providers or officials within the correctional system. Good staff-inmate relationships are considered to be the best form of ("dynamic") security in prison and the best guarantee that offenders will desist from any further criminal activity upon their return to society. All staff are trained to use motivational interviewing techniques and to have a positive attitude towards the inmate.

**No overcrowding… a waiting list for certain offenders to get into prison**

Once an unconditional prison sentence has been passed, the CSN will find a place for the convicted offender to serve their sentence. Placing the prisoner as close as possible to family and other relations is a primary guiding principle. However, for a number of years there has been a shortage of cells; a problem that has lately become more acute due to the substantial increase in remand prisoners and prisoners with foreign citizenship. CSN has chosen not to solve this problem by overloading the available prison capacity, but keeps as much as possible to the principle of one cell for one prisoner. The resulting shortage has led to the existence of a "waiting list". A number of sentenced offenders have had to wait for a cell to become available before they could start serving their time. In a number of cases, this undesirable situation has been known to last up to almost two years. The sentenced offender is punished doubly by the uncertainty of their future and the lack of possibility to plan ahead. CSN are continually exploring options for reducing the length of this waiting list.

**The principle of normality… punishment lies in the restriction of liberty and compromises no other civil rights**

Norwegian corrections is guided by a number of general principles. The most important one is the principle of normality. It implies that the punishment lies in the restriction of liberty, and no other civil rights shall be compromised as a result of the prison sentence. The offender has all the rights that other citizens have in Norway. For example, Norwegian prisoners have the right to vote. The principle also implies that no one shall serve their sentence under stricter circumstances than is necessary for implementing the sentence and ensuring public safety.

Offenders shall be placed in the regime having the lowest possible degree of security, i.e., a closed or open prison, or a half-way house, and prisoners can be moved through the system in order to facilitate the 'right' progression towards release. Such decisions are mostly made on a clinical basis as there is no structured risk-assessment tool. Finally, the principle implies that serving a sentence shall, as much as possible, resemble life outside the institution. This principle is limited by concerns over security and order within the institution, as well as availability of staff and other resources. Yet, arguments of one or another kind must be given before a specific right is compromised.

**Discretionary powers to release following a gradual progression through security levels**

The more closed the carceral system is, the more difficult the return to freedom will be. There-fore, the aim is a gradual progression through security levels and, if possible, to a release on license (parole). Another possibility is temporary home detention, with or without electronic monitoring. CSN has considerable discretionary authority in deciding the way a sentence is served. Courts are no longer involved after a sentence is passed. CSN is responsible for how the sentence will be executed, e.g., release on license, serving in a treatment institution, home detention, electronic monitoring. CSN can also determine conditions and transfer an offender back to prison if there is a breach of the terms of release. The same principle applies to a community sentence, for which the court imposes the number of hours and leaves it to probation to fill these hours with any activity it may deem useful for preventing reoffending. Only 60-65% of all hours served in community sentence are unpaid labor, the rest are for skills training, (adult) education, cognitive behavioral programs, employment programs, mediation, etc.

**Certain prison staff "imported" from the community… improved continuity of service *vis-a-vis* reintegration**

Norwegian prisons do not have their own staff delivering medical, educational, employment, clerical, or library services. These and other services are 'imported' from the community. The advantages of this arrangement lies in improved continuity of services, through the increased involvement and contact on the part of the community. In Norway, prisons are viewed as social institutions, not as isolated units existing outside society.

A 2004 survey quantified the many, combined and sadly familiar socio-financial problems, experienced by inmates in Norwegian prisons: a high unemployment rate, accommodation problems, low levels of education, low income, poor physical and/or mental health, addictions, etc.[3]

**Norway's 2005 "reintegration guarantee" – arranging for reintegration and re-acceptance in the community as opposed to retribution**

In 2005, the new government introduced a "reintegration guarantee". This entails that everyone who has served their sentence will have an offer of services in relevant areas,

[2] Correctional Services of Norway. Annual statistical report

[3] Friestad, C. and I. L. Skog Hansen, *Levekår blant innsatte*, FAFO, 2004

and that CSN will play an active role. The short sentences imply that the reintegration process will need to start as quickly as possible after the offender is imprisoned. The reintegration guarantee is not a legal guarantee, but a political one. It represents the intentions of the government, and all relevant departments as well as the underlying public institutions are bound to cooperate with each other in order to implement it. The reintegration guarantee may be considered the pivotal point in Norwegian penal philosophy with its focus on punishment as a means of arranging for reintegration and re-acceptance in the community, as opposed to retribution.

**Conflict boards recall Norwegian criminologist Nils Christie**

Preventing new victims is prioritized over vengeance for past victims. One explanation for this may be that the geographical situation has created a tradition where members of a small community had to be accepted again and taken back after misbehaving in order to keep the community going. This explanation is supported by the country's historically strong position on mediation and restorative practices evidenced by the presence of conflict boards throughout the country – as proposed some forty years ago by Norwegian criminologist Nils Christie.

**Trends for specific groups**

As mentioned, since 2007, pressure on Norway's correctional system has increased substantially. This has been largely due to the growing number of incarcerated foreign nationals, many from Eastern European countries who entered under the Schengen Agreement for free movement of the population. Their numbers have more than doubled since 2006. This development presents a number of challenges for the staff, e.g., language, religion, culture, etc. In addition, the road to reintegration has become more complicated and challenging. The fact that some of the foreign nationals are involved in organized crime represents a security risk as well. In December 2012, a special prison was opened for such offenders so as to be able to offer more relevant services to those who will not be released into Norwegian society.

Norway has no specific prisons for *remand prisoners* even though their numbers are growing, partly due to the increase in foreign nationals, placing new pressures on the system. In June 2013 there were about 1,100 remand prisoners, accounting for nearly 30% of total capacity. This development is especially detrimental to the length of the waiting list for sentenced offenders.

A significant number of prisoners have to cope with *mental health problems,* which are often combined with addiction issues. CSN does not always have the competency or resources to deal with this. Plans have been developed for creating special resource wards where inmates with specific mental health problems can receive the cross-professional attention they need.

Prisoners have, to a certain degree, access to treatment for addiction problems. In a number of prisons, special wards have been created for inmates who want to work at overcoming their addiction, and who there will receive cross-professional help.

**No special legislation or courts for juveniles… the age of criminal responsibility begins at 15**

Norway does not have special legislation or courts for juveniles, and unlike in many other European countries, the age of criminal responsibility begins at 15 as opposed to 12. The government policy is that no one under 18 shall be placed in prison, but for serious cases such imprisonment will nonetheless be unavoidable. However, the total daily number has never been over 10 inmates in recent years. Two specific institutions – one of which is already active – are planned to receive this age group. These institutions are characterized by a very high staff-inmate ratio and use a cross-professional approach.

**Norway has one form of indefinite sanction**

Norway has one form of indefinite sanction, called *preventive detention.* In 2011, 76 offenders were serving such a sentence. It is imposed by the court on dangerous offenders when an ordinary time-limited sentence is considered insufficient for protecting the community. Such offenders have committed an offence that is considered harmful to others and are thus considered a substantial risk for re-offending. After a minimum period of preventive detention has been served, an assessment is made as to the continued dangerousness of the offender. If this is found to be the case, the detention may be prolonged by the court for a period of up to five years. The process is then repeated, which means that preventive detention may in principle result in a life sentence. CSN have a responsibility to work with offenders to reduce their risk. Those who have been found to be *unaccountable* for their criminal acts because of psychiatric disturbances at the time the criminal act was committed may be sentenced to mandatory psychiatric treatment. They will then become the responsibility of the health authorities and not of the correctional services.

**Does the "soft option" work?**

As stated at the outset of this article, the goals of CSN can be measured in various ways. There is, for example, relatively little violence in Norwegian prisons and the suicide rate is low. Drug use in prison is, however, a relatively regular phenomenon. As to security, there are extremely few escape attempts and more than 99.5% of inmates on leave return to the institution on time.

The primary goal of protecting the public may be measured by re-offending rates. An independent study, published in 2010, compared the five Nordic countries of Finland, Sweden, Denmark, Norway, and Iceland. All prisoners released in a specific year were followed up on. If they committed a crime within two years of release and it resulted in a prison sentence or a community sentence, it was registered as re-offending. Norway had a recidivism rate of only 20%.[4] Keeping in mind that these results were accomplished in a relatively rich country with, among other, a low unemployment rate of around 3% and a high *per capita* income, they are nevertheless worth noting in an international context. And what about the public? A survey among a representative sample of the Norwegian people showed that

[4]Nordic Research Group, *Retur.* 2010

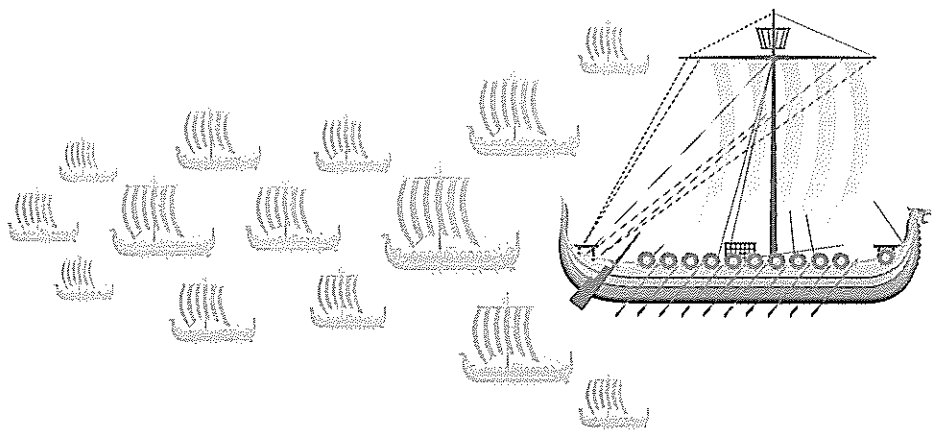
of five possible main goals for punishment, i.e., retribution, general prevention, special prevention, incapacitation and rehabilitation, the latter received the strongest support.[5]

**Closing remarks**

Norway has been criticized for being too "soft" on its offenders. It has, for that matter, also been criticized by the European Committee for the Prevention of Torture for its long periods of pre-trial detention and for its use of isolation during imprisonment. There are no ideal solutions in penal practice, and there is exceptionalism in all possible directions in various jurisdictions. Yet, in the end those practices generating the lowest number of new victims may be considered the most successful.

Although challenges lie ahead in the form of a changing criminal landscape and in how the public, media and politics may respond; with its basis in shared principles of humanism and reintegration, the Norwegian system would appear to be a step in the right direction. In a world where many take on a course of longer incapacitation and tougher approaches, the Norwegian Viking ship stubbornly keeps sailing the other way.••

[5] Advokatforeningens sparreundersøkelse om straff og straffegjennomføring, TNS Gallup, 2007




## RÉSUMÉ

**THE PRISON SYSTEM IN NORWAY: A SOFT OPTION?**

**Par Gerhard Ploeg, conseiller principal, Direction des services correctionnels de la Norvège**

Gerhard Ploeg traite ici des principes, des réussites et de défis des Services correctionnels de la Norvège en lien avec l'attention internationale qu'ils ont attirée depuis les événements terroristes du 22 juillet 2011. L'auteur souligne que les médias ont initialement remis en question l'absence d'un tollé général de la population norvégienne qui, comme Ploeg, continue de prôner ce qu'on en est venu à appeler l'option douce de la Norvège. Il réagit aux critiques en faisant état des taux relativement faibles de la violence, des tentatives d'évasion et de la récidive dans l'ensemble du processus correctionnel. Ploeg loue la Norvège d'offrir une formation multidisciplinaire aux agents correctionnels. Il salue le fait que les droits de la personne des détenus sont préservés, et que les établissements correctionnels recrutent du personnel des collectivités afin d'offrir un large éventail de services professionnels. L'auteur met en lumière plusieurs pratiques et approches correctionnelles particulières en Norvège, notamment en ce qui a trait au surpeuplement carcéral (une liste d'attente), aux peines indéterminées, à la détention préventive, etc. Ploeg attribue l'historique de la médiation en Norvège, les pratiques réparatrices et les commissions de résolution des conflits [conflict boards] au criminologue norvégien, Nils Christie. Enfin, il résume ainsi la position de la Norvège en matière de réforme des prisons : *À une époque où bon nombre favorisent des périodes de neutralisation plus longues et des approches plus dures, le navire des Vikings norvégiens s'entête à voguer dans la direction contraire.*



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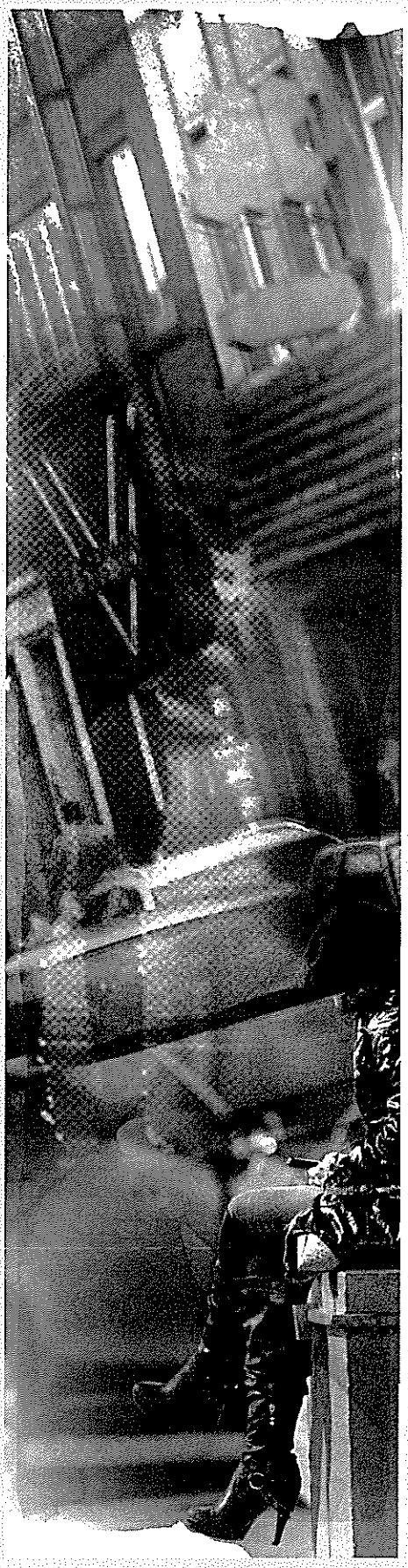

# PROSTITUTION IN ROMANIA: THE JOURNEY TO ABOLITIONISM

**BY ANDRA-ROXANA ILIE,** Ph.D., Assistant Lecturer, Faculty of Law, University of Bucharest, Romania

## SNAPSHOT OF ROMANIA

Romania is a small country in the eastern part of south-east Europe, or what is sometimes also referred to as the Balkan region. Romania has a rich and diverse history. Most recently (1965-1989), Romania was a communist "people's republic" under the dictatorial rule of Nicolae Ceausescu, whose political influence lasted until around 1996. Since then, however, Romania has attempted to move forward socially, politically, and economically. Romania joined the EU in 2007 and began to reform the country's criminal justice system, one of the longstanding concerns of which has been the issue of prostitution. A look at Romanian legislation and reforms as regards prostitution laws reveals a rich history of prohibition, regulation, and, more recently, an innovative move toward abolition.

## ROMANIA AND PROSTITUTION

The Romanian legislature has never shown much coherence in its approaches to prostitution. After moving from prohibition to regulation and back, it appears the legislature is now trying to turn again to regulation, but this time by means of abolition, i.e., no regulation regarding prostitution. This paradox is explained by a number of historical, social, economic and cultural factors. The church has also played an important role in shaping perception and influencing legislation on prostitution in Romania.

## HISTORICAL APPROACH TO PROSTITUTION IN ROMANIA

The first official mention of prostitution in Romania dates back to 1472, when Stephen the Great (King of Moldavia) tried to stop "human" traffickers (or "pimps") from trafficking women to Turkey. During the 17th century, it was not uncommon for prostitutes to be tortured or killed by the authorities, because of their profession. Around the same time, pimping was made illegal, as was the use of brothels for the purpose of housing prostitutes. In the 18th century, the church began to apply increasing pressure on the State to ban the practice of prostitution altogether. The State, however, recognizing that it might not be possible to completely ban solicitation for the purpose of prostitution, introduced instead the first regulations on sexual hygiene and required that prostitutes have periodic mandatory visits to doctors. There was nonetheless quite a spread of syphilis and other transmittable diseases at that time (see Foucault, 1995).

The first attempt to monitor and regulate prostitution was made in 1859, six years after the first register of prostitutes was established. The regulations of 1859 classified prostitutes into three categories, depending largely on the "way" it was practiced. The first category was formed of women practicing the profession without hiding and without facing any risk from the authorities; the second category included women who prostituted in private, having certain hygiene guarantees but were facing some risks from the authorities, while the third category

***Due to the numerous critiques of the previous Code, a new commission began drafting a new Criminal Code, which was finally published in the Official Journal No. 510 of July 24, 2009 and entered into force on February 1, 2014... One of the main novelties of this new Code is the abolition of prostitution.***

exercised the profession with assistance by other persons (madams, as only women were permitted to coordinate a prostitution network). All prostitutes were required to submit to a series of medical tests, and any who failed to do so were punished. Recidivists could even be exiled for three years, to a place established by the authorities.

## THE BROTHELS OF BUCHAREST

The brothels of Bucharest were legal from the end of 19th century. Also, a regulation following the French model forbade prostitutes to walk certain streets in the afternoon when other people were likely to be walking around. Prostitutes had a personal register in which they were required to keep track of their medical visits and number of clients. The register could be viewed by the client, who had the right to file a complaint against the prostitute for failure to attend legislated medical visits. A separate register was kept by the mayor.

At the beginning of 20th century, prostitution was fairly common and widespread in Romania with about 12,000 registered prostitutes throughout the country. The taxes paid by prostitutes depended on the type of brothel. The average incomes in this field were higher than those of lawyers. Clients also had the option of making reservations to guarantee the services of a prostitute on weekends or during holidays.

Later in the 20th century, prostitution would be forbidden within brothels, although prostitutes were still at risk of being sued for contagion of venereal diseases. In 1930, all brothels were suppressed and prostitution became illegal, but prostitutes continued to work under the tacit protection of public authorities. In 1943, the prostitution regime was redefined – only public prostitution (i.e., street prostitution) was illegal. The last brothels were closed in 1949. Starting in 1957, the Romanian Criminal Code banned prostitution entirely and anyone caught working as a prostitute was sent to work in a factory.

## CHANGES TO THE ROMANIAN CRIMINAL CODE

Until 2014 when the new Romanian Criminal Code was introduced, the previous Criminal Code dated back to 1968 and had been drafted under Marxist influence. In Article 328, prostitution was defined as a crime and pimping was also defined in Article 329. However, there were various inconsistencies of this Code. For example, both crimes were included in Title IX ("*Crimes against relationships regarding social cohabitation*"), Chapter IV ("*Other crimes against relationships regarding social cohabitation*"), following chapters providing for crimes against the family, crimes against public health and crimes regarding assistance of vulnerable persons (Dongoroz, 1971).

## THE ROMANIAN CRIMINAL CODE... NO MORE THAN 15 WOMEN IMPRISONED FOR PROSTITUTION IN 2008

According to the Code of 1968, prostitution was defined as earning the means of livelihood or the principal means of livelihood by practicing for this purpose sexual intercourse with different persons. The penalty was imprisonment ranging from three months to three years. As the legal literature pointed out, this definition was objectionable **for many reasons** (Cioclei, 2009).

**Forbidden actions included only sexual intercourse...** meaning all other sexual contact, such as oral sex or anal sex, remained outside the domain of Article 328 of the Criminal Code of 1968. This paradox was easily explained as follows: under the 1968 legislature, only sexual intercourse in exchange for money or other benefits was considered a threat to social cohabitation. It was practically the same situation as for rape: only non-consensual sexual intercourse constituted a crime. Since "forbidden actions" did not include oral or anal sex, those acts were not crimes even if non-consensual. In case of rape, however, this anomaly was corrected in 1996 through a law that significantly modified the Criminal Code, which was direly needed after the fall of Communism in 1989; however, the law did not modify Article 328 of the new Code. Consequently, only sexual intercourse (between a man and a woman according to Romanian law) was taken into consideration in the case of prostitution. However, if this crime did indeed endanger the relationships required for social cohabitation, as the title of the article suggested, it is obvious that all other types of sex should also have been incriminated.

**Only sexual intercourse (as defined above) was incriminated...** meaning prostitution could only have been committed between a woman and a man. Sexual relationships between persons of the same gender, even for money or other benefits, did not represent a crime. In addition, even if the Criminal Code of 1968 did not expressly provide that only women could commit this crime, up till 2014 only women have been sentenced for prostitution in Romania. For the law to be effective and fair, men, as well as persons who practice same-sex prostitution, should also have been punishable for prostitution (as this type of prostitution was also going on).

**Prostitution only existed when the purpose of committed sexual intercourse was to earn a living...** meaning if a

person had a livelihood other than prostitution, then sexual intercourse in exchange for money or other benefits did not represent a crime. This was again illustrative of hypocrisy in the law. For example, if the social value being protected was the morality of sexual relationships or, more broadly, social cohabitation, would not the logical conclusion be that having sexual intercourse in exchange for money, or other benefits, always represents a crime and not only under the specific conditions provided by the law?

**The law only punished sexual intercourse when it was had with various persons...** meaning if a person obtained material benefits from a single person for practicing sexual intercourse with that person, such fact did not represent prostitution. Again, we were left wondering what exactly the object of the protection was supposed to be. And, if it was the morality of sexual relationships, the logical conclusion would be that all sexual intercourses in exchange of money or other benefits should have been punished (Cioclei, 2009). This also explains why prostitution was considered a repeat offence, because multiple incidences of sexual intercourse were required. A single act of sexual intercourse was therefore insufficient by the characterization of the crime and usually did not represent more than a misdemeanor punished with a fine (which the prostitute would normally never pay). Only after multiple fines, policemen considered initiating criminal proceedings against a prostitute.

This was also one of the reasons why there were very few convictions for prostitution in Romania. For example, in 2008, no more than 15 women were imprisoned for prostitution.

## A NEW ROMANIAN CRIMINAL CODE ABOLISHING PROSTITUTION ENTERED INTO FORCE ON FEBRUARY 1, 2014

Due to the numerous critiques of the previous Code, a new commission began drafting a new *Criminal Code*, which was finally published in the Official Journal no. 510 of July 24, 2009 and entered into force on February 1, 2014.

One of the main novelties of this new Code is the abolition of prostitution. This idea created many debates among Romanian citizens as well as within the Orthodox Church (which pronounced itself against prostitution and thus against abolition).

## PROSTITUTION NO LONGER A CRIME IN ROMANIA UNDER THE NEW CODE

Indeed, under the new Romanian Criminal Code, prostitution is no longer a crime. The main reason for this decision was that prostitution is a reality and women who prostitute are generally forced to do so or are being exploited. Statistical evidences supports this with a reported 9% of the prostitutes in Romania in 2005 minors and about 60% aged between 20-29 years. Twelve percent of the prostitutes have never been to school and 50% had stopped attending during primary school. About 30% of the prostitutes had been sold/bought, most of them having been raised in orphanages. Fifty percent of the women were abused by their clients (Balan, 2008). All told, the legislature decided that women must be able to seek help without risking criminal charges.

Last, it must be underlined that prostitution does remain mentioned in the new Criminal Code, in connection to pimping. Thus, pimping means the determination or the facilitation of prostitution, defined as: "*performing sexual acts with different persons in order to obtain patrimonial benefits to oneself or for a third party*".

## THE HISTORY OF PROSTITUTION IN ROMANIA IS STILL BEING WRITTEN

The history of prostitution in Romania is still being written. Even if prostitution remains decriminalized, it is not clear that this is a solution that could solve all the problems and challenges associated with the sexual exploitation of women. We must not forget that the law regarding prostitution was almost inapplicable until 2014. But, in any event, the choice between an inapplicable hypocritical law and a sincere law that does not incriminate prostitution in order to protect women from exploitation seems obvious. Let us not forget the many voices affirming abolition as a step towards regulation, which in turn would bring many benefits for everybody in terms of medical testing/checkups and taxation. Only time will tell what will happen. The topic, however, remains one of great importance, not only at a national level, but at an international one as well, because the approach of Romanian legislature to prostitution/human trafficking within its borders impacts the entire international community insomuch as human trafficking is sometimes a cross-border crime that is difficult to prosecute precisely due to disparate laws among countries otherwise united by human trafficking.••

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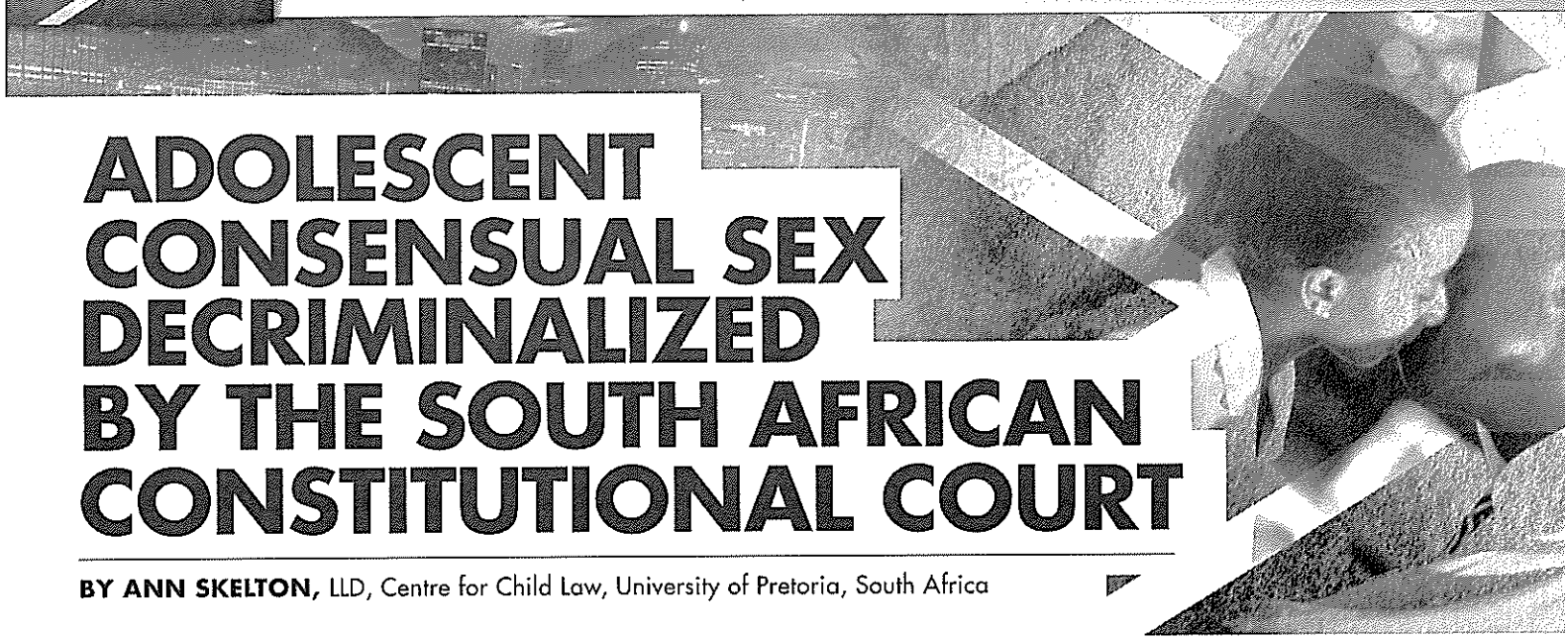
## RÉSUMÉ

**PROSTITUTION IN ROMANIA: THE JOURNEY TO ABOLITIONISM**

**Par Andra-Roxana Ilie, Ph.D., Faculté de droit, Université de Bucarest, Roumanie**

Cet article informatif transporte le lecteur de 1898 à nos jours, faisant le point sur les nombreuses approches adoptées par l'Assemblée législative roumaine au chapitre de la prostitution. Après être passée de la prohibition à la réglementation et être revenue sur ses pas, il semble que cette Assemblée soit de nouveau sur la voie de la réglementation, en passant cette fois par l'abolition en vertu d'une nouvelle loi entrée en vigueur le 1er février 2014. Selon l'auteure, ce paradoxe est attribuable à de nombreux facteurs historiques, sociaux, économiques et culturels. L'intérêt renouvelé pour l'abolition provient toutefois de la perception selon laquelle les femmes qui s'adonnent à la prostitution sont en règle générale exploitées ou forcées de le faire et, de ce fait, ne sont pas en mesure de demander de l'aide sans s'exposer à des poursuites criminelles. On espère que l'abolition donnera lieu à de la réglementation en matière de santé et d'hygiène.



# ADOLESCENT CONSENSUAL SEX DECRIMINALIZED BY THE SOUTH AFRICAN CONSTITUTIONAL COURT

**BY ANN SKELTON,** LLD, Centre for Child Law, University of Pretoria, South Africa

A recent constitutional challenge to the criminalization of sexual activities between consenting adolescents, South Africa's new Sexual Offences legislation, had good intentions of protecting children from sexual abuse, but went too far by criminalizing all consensual sexual activity from kissing through intercourse between adolescents aged 12 – 16 years. This was linked to a mandatory reporting provision, so parents, teachers and counsellors who knew about such activities were required to inform the police. The law exposed adolescents to the risk of prosecution, and if convicted, their names were placed on the National Register for Sex Offenders. Two children's rights organizations, legally assisted by the Centre for Child Law, challenged this law on the basis that it unjustifiably infringed the rights of children to dignity, privacy, sexual autonomy, and to have their best interests considered paramount. The Constitutional Court handed down a judgment in October of 2013, declaring the legislation unconstitutional and therefore effectively decriminalizing consensual sex between adolescents.

## A NEW LAW ON SEXUAL OFFENCES FOR SOUTH AFRICA

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, i.e., Act No. 32 of 2007 (hereafter Sexual Offences Act) was heralded as a great step forward in the ongoing struggle against sexual violence in South Africa, especially given the prevalence of such crimes against children. The impetus for the law came when the South African Law Reform Commission was asked by the Minister of Justice and Constitutional Development to expand its program to include an investigation into sexual offences against children. The ensuing investigation was later expanded to include adult victims of sexual offences, and became a comprehensive overhaul of the sexual offences law. The Sexual Offences Act reformed the common law concept from one of "rape" to one of "penetrative sexual violation", which now is gender neutral and includes a wide range of penetrative acts into any orifice, with various parts of the body or with objects.

## POLITICIANS ADD PROBLEMATIC PROVISIONS...

The Bill drafted by the Law Reform Commission proceeded to Parliament. There, overzealous members of the legislature, keen to demonstrate just how tough they were on crime, added numerous new sections while the Bill was still being debated. For example, the parliamentary portfolio committee decided to include a sex offenders' register despite the fact that the experts on the Law Commission Committee had considered such a measure but, after researching comparative models, decided not to include one. Another idea that the parliamentary portfolio committee came up with was to include a requirement that when children who are both between the ages of 12 and 16 years indulge in any form of sexual violation (e.g., penetrative or non-penetrative) and a decision is taken to prosecute them, both must be prosecuted. The minutes of the parliamentary portfolio committee indicate that the members of the legislature were particularly proud of the gender neutral nature of this amendment – they said it would obviate what they called the 'angry father syndrome' which, they considered, operated unfairly against males in the old system.

In fact, in the legal system prior to the new one ushered in by the Sexual Offences Act, children below 16 years of age were never prosecuted for consenting sexual activity. The legal age of consent was 16 years, and persons older than 16 years who had sexual intercourse with a person younger than 16 years committed the offence of statutory rape, but only the person over 16 years of age was charged. Thus the introduction of a sexual offence for children below 16 years engaging in consenting sexual activity was completely new in South African law.

Certain legal provisions of the Act came under constitutional scrutiny, for example:

1. A person ("A") who commits an act of sexual penetration with a child ("B") is, despite the consent of B to the commission of such an act, guilty of the offence of having committed an act of consensual sexual penetration with a child.

2. The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions if both A and B were children at the time of the alleged commission of the offence;

> Provided that, in the event that the National Director of Public Prosecutions authorises the institution of a prosecution, both A and B must be charged with contravening subsection (1).

Section 16 is similar, except it refers to sexual violation (non-penetrative), and in such instances, the Director of Public Prosecutions in the province where the incident occurred must authorise the prosecution.

While the protection of children from sexual advances by adults is clearly beneficial and had long been part of our law, the idea that if children who were both between 12 and 16 years engage in consensual sexual activity they are both committing a crime due to their inability to consent was a concerning innovation.

## CHILDREN CHARGED FOR CONSENSUAL SEX... A CONCERNING INNOVATION

Children's rights organisations in South Africa were concerned about these new provisions. In November 2010, the National Director of Public Prosecutions (NDPP) decided to prosecute children in a case which came to be known in the media as the Jules High case. Three teenagers between 12 and 16 years (two boys and a girl) had, while heavily under the influence of alcohol, had sex with one another on school premises and other teenagers at the school had filmed the event. When police were called, they originally opened a charge of rape against the boys. However, although the girl was initially treated as a witness, the cell phone footage seemed to indicate her willing participation (although her extreme drunkenness did not seem to be weighed in) and thus she was charged, together with the boys, with the new sexual offence under section 15 of the Sexual Offences Act. The three teens were all referred for a diversion programme managed by an organisation called Teddy Bear Clinic (see http://ttbc.org.za/). Successful completion of diversion entailed a withdrawal of charges and no criminal record was obtained. However, the impact on their lives was significant, particularly the girl, who never returned to the school.

Shortly after this case, the NDPP again used his discretion to prosecute a group of teenagers, from a given school, whose consensual sexual activity had resulted in pregnancy. Children's rights organisations swung into action. The Teddy Bear Clinic and RAPCAN, legally represented by the Centre for Child Law, launched a constitutional challenge to what were increasingly seen as overzealous provisions.

## SECTIONS OF THE SOUTH AFRICA SEXUAL OFFENCE ACT CHALLENGED IN THE CONSTITUTIONAL COURT

In papers before the court, the applicants made the following points:

Adolescents [12-16 years of age] are in a special position. Physiologically, they are rapidly developing and maturing, but psychologically they are not yet fully developed and are still vulnerable to the influence of adults. For this reason, the Applicants accepted sections 15 and 16 as constitutionally permissible insofar as they criminalise the sexual conduct of adults, but, to the extent that the sections criminalise the sexual conduct of children, the Applicants deemed them unconstitutional.

In this legal challenge, the Applicants also asked the court to find the law unconstitutional because it gives rise to irrationality and absurdity.

In the Applicants' affidavit, reliance was placed on the expert opinion of Professor Alan Flisher and Ms. Annik Gevers:

- Onset of puberty generally occurs before or around 12 years of age, while most other physical indications of sexual maturity manifest between the ages of 12 and 16 years;
- Intimate relationships between adolescents are 'developmentally normative' – i.e., normal, with up to 87% of a cross section of Grade 8 to Grade 11 pupils in one study indicating they are/were in an intimate relationship.

The founding affidavit also drew attention to further anomalies in our laws. Whilst section 15 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act makes it a crime for children to engage in sexual intercourse, section 134 of the Children's Act No. 38 of 2005 stipulates that no person may refuse to sell or provide condoms to a child over the age of 12 years. Other forms of contraceptive can be provided on request by a child if the child is at least 12 years of age and has been physically examined. These children are entitled to confidentiality under the Children's Act, but, under the Sexual Offences Act, a person knowing a sexual offence is being committed under the provisions of section 15 (consensual sexual intercourse) has a duty to report it to the police. Furthermore, the Termination of Pregnancy Act allows girls of any age to decide to terminate their pregnancies, provided they have had counselling.

The court papers pointed out that the abovementioned provisions aim to make reproductive health services available to children who need them, and this is contradicted by the reporting requirements under the Sexual Offences Act.

In essence, the Applicant's case was that while it might be reasonable for the state to take an interest in discouraging sexual activity among children between the ages of 12 and 16 years, this could be achieved through educative approaches. There is no need for the law to criminalise sex between teenagers.

The response by the Respondent (Minister of Justice and Constitutional Development) focused on moral concerns as well as concerns about teenage pregnancy and sexually transmitted diseases. The measures were considered necessary in order to protect children from their own immature judgment. The Minister also claimed that although the law authorised prosecution, it did not require it and the children could, under the Child Justice Act, be diverted from the criminal justice system. This ameliorated the effects of the impugned provisions.

The fact, however, that children will often be diverted (in terms of the Child Justice Act) following a decision to prosecute, does not

protect them from substantial trauma and harm inflicted by the process. For example, before being diverted children would be exposed to the earlier process in the criminal justice system such as arrest, being required to provide detailed statements about their sexual conduct, being questioned by police and other authorities about their sexual conduct or even being detained in police cells.

There were two friends of the court in this matter. The Women's Legal Centre weighed in on the side of the Applicants, stressing the particular harm that the law would cause to female adolescents, in the light of social attitudes towards girls and sex, because pregnancy makes it obvious that a girl has had sex. Access to reproductive health care would be severely infringed. Furthermore, it would discourage girls to report rape out of fear that if the alleged perpetrator claimed the sexual activity was consensual the girl might face being charged for having consenting sex herself – something that would not happen to an adult woman.

The other friend of the Court supported the position of the Respondent (the Minister for Justice and Constitutional Development). The Justice Alliance of South Africa, as a fundamentalist Christian organisation, asserted that the infringement of children's rights to dignity and privacy were reasonable and justifiable given the rate of teenage pregnancy, sexually transmitted diseases and psychological harm caused by early sexual intercourse. It presented the view that parents would be assisted in their guidance of their children by way of 'back up' by the criminal justice system.

## RULING BY THE CONSTITUTIONAL COURT

On October 3, 2013, the Constitutional Court handed down a unanimous judgment which found the impugned provisions infringed on the rights of dignity and privacy and further violated the best interests principle. The court relied heavily on the expert evidence adduced by the Applicants, and concluded that the impugned provisions criminalised developmentally normative conduct for adolescents and negatively affected the very children the law sought to protect. Thus, the law was not rationally connected to its purpose. Justice Khampepe, who penned the judgment, said it was important to stress what the case was not about. It was not about whether children should engage in sexual conduct, nor was it about setting a lower age of consent. The case was about the narrow issue of whether it was constitutionally permissible to criminalise children as a means of deterring early sexual intimacy and combatting associated risks.

Justice Khampepe underlined the dignity of children, describing the law as having placed youthful transgressors in a state of disgrace. She clearly recognised that sexual intimacy and sexual choices are part of the innermost sanctity of a person's dignity, and she included children's intimacy within that constitutionally protected ambit. She said it struck her as fundamentally irrational to state that adolescents do not have the capacity to make choices about their sexual activity, yet in the same breath to contend that they have the capacity to be held criminally liable for such choices.

Having declared the law unconstitutional, the Court referred the matter to Parliament, giving it 18 months to bring the law in line with the Constitution. The Court also ordered a moratorium on any further prosecutions or diversions until the law has been changed, and directed the authorities to ensure that any criminal records or records of diversion are to be expunged.

## THE IMPORTANCE OF RETAINING BALANCE WHEN DRAFTING LEGISLATION

The judgment is a refreshing reminder of the imperative of balance when drafting laws about sexual offences. This legislation aimed to protect children from sexual harm, but ended up placing them at risk through stigmatization and criminalization of developmentally normative conduct. The judgement cautions against the state's incursion into areas of private life, and recognises adolescent autonomy in sexual decision making. The Constitutional Court judges were convinced that sexual exploration between children is normal and can be developmentally healthy – a sensible approach often lost in the punitive legislative fever to define sexual acts increasingly broadly. The Court clearly understood that children may benefit from guidance and education provided by parents and counsellors as they develop through adolescence into adulthood, but they do not need police, prosecutors, probation officers and magistrates interfering in their consensual sexual exploration.••

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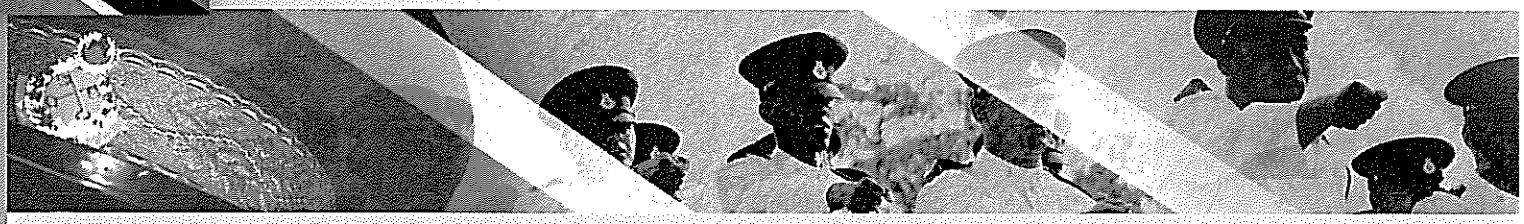
## RÉSUMÉ

**ADOLESCENT CONSENSUAL SEX DECRIMINALIZED BY THE SOUTH AFRICAN CONSTITUTIONAL COURT**

**Par Ann Skelton, LLD, Centre for Child Law, University of Pretoria, SA**

La nouvelle loi sud-africaine sur les délits sexuels procède de bonnes intentions en voulant protéger les enfants contre les agressions sexuelles, mais elle allait trop loin en criminalisant toute activité sexuelle consensuelle entre enfants de 12 à 16 ans, depuis le simple baiser jusqu'aux rapports sexuels complets. Cette loi exposait les adolescents à des risques de poursuite et exigeait que le nom de toute personne condamnée soit inscrit au registre des délinquants sexuels. Deux organismes de protection des droits des enfants, avec l'aide juridique du Centre for Child Law, ont contesté cette loi, alléguant qu'elle enfreignait de manière injustifiable les droits des adolescents à la dignité, à la vie privée et à l'autonomie sexuelle. La Cour constitutionnelle a statué en octobre 2013 que la loi était inconstitutionnelle et a décriminalisé du même coup l'activité sexuelle consensuelle entre adolescents.



# "TO HOLD & TRAIN": THE TRINIDAD & TOBAGO PRISON SERVICE

**BY RANDY SEEPERSAD,** Ph.D., Dianne Williams, Ph.D., and Allan Patenaude, Ph.D.

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As both the Trinidad and Tobago Police Service and the Trinidad and Tobago Prison Service employ the acronym 'TTPS', **'TTPrS** denotes the latter for the purposes of this article.

## INTRODUCTION

Prior to the publication of Martinson's (1974) critique of American correctional programming and the subsequent heralding of the "What Works" era worldwide, the speed of systemic change among most prison systems could be described as glacially slow. Most examinations have tended to focus on North American and European prison services, with lesser attention paid to those in Australia and the United Kingdom. Post-colonial prison systems in small states are often overlooked in the process, especially among those countries having come into existence through peaceful transition rather than revolution. Indeed, the change from colonial to national seems to have been one of title alone, with organization, administration, uniforms, standards, and operations carrying on as before.

The Republic of Trinidad and Tobago is a parliamentary democracy in the Southern Caribbean islands of Trinidad (4,828 sq. km.) and Tobago (300 sq. km.) lying 11.3 km off the northeastern coast of Venezuela south of Grenada. It is a plural society whose multi-ethnic population of 1.4 million people is of East Indian descent (40%), African descent (40%) and 'Other' or mixed descent (20%). Trinidad's colonial past is one of slavery and staple extraction under the British, who, along with the Dutch, and the French, lay claim to the colonial history of Tobago (Tourism Development Company, 2013; US Department of State, 2011).

## THE TRINIDAD AND TOBAGO PRISON SERVICE (TTPRS)

The Trinidad and Tobago Prison Service (hereafter TTPrS) executes both the short-term gaol, i.e., *jail*, and the long-term penitentiary functions within a single organizational structure. In 2012, Trinidad and Tobago had a total inmate population of 3,614 inmates for a rate of 281 per 100,000 of the adult population (International Centre for Prison Studies 2013). A recidivism rate of 49% among adult offenders in 2011 (Seepersad 2013, p. 109) indicates a need for better mechanisms to address those who are incarcerated as well as their recidivism rates.

The TTPrS offers a case-in-point for those seeking to understand how the dynamic and often conflicting tensions of custody and rehabilitation of offenders are addressed on a small-island developing state. The current discussion asks the reader whether the TTPrS is living up to both its motto, "To Hold and Train", as well as its embodied ideals as regards detention or retribution and rehabilitation.

## TRINIDAD AND TOBAGO'S COLONIAL PRISON LEGACY

The TTPrS was initially established in 1592 through the building of a prison in the-then capital of St. Joseph. In 1757 it was relocated to the new capital, Port of Spain where it was destroyed by fire in 1808. In 1812, the prison, now known as the Port of Spain Prison, was established at its present location in the city. In time, the colony outgrew that single prison's ability to detain and incarcerate offenders; by 1949 it had expanded by means of a small prison service that included Port of Spain Prison, Carrera Island Convict Prison, and Golden Grove Prison as well as its Youth Training Centre (see Table 1).

## PORT OF SPAIN PRISON - LOCAL MEDIA DENOUNCE CONDITIONS AND CALL FOR CLOSURE

The Port of Spain Prison, then known as the Royal Gaol, began its tenure to hold both convicted and remanded offenders and was subsequently expanded as the colony's detention and incarceration needs increased. Although expanded, both the foreboding exterior and single-cell design reflected the moral architecture that dominated the period (Taylor, 1979). No rehabilitative ser-

vices were provided and inmates worked continuously albeit not gainfully, since most work efforts were to maintain the prison and its inmate population (Abdulah et al., 1980). Two commissions of inquiry (1978 and 2002) and the local media have denounced the conditions of the Port of Spain Prison and the latter has called for its closure.

### CARRERA ISLAND CONVICT PRISON... APPROXIMATELY 60% OVERPOPULATED

The Carrera Island Convict Prison, located offshore from Chaguaramas in northwest Trinidad, originally served as a convict depot, both for convicts deemed too dangerous to associate with other local inmates and those transported from Britain, between 1854 and 1877. During those years, inmates serving hard labour quarried limestone for use in the construction of roads and the permanent prison, which opened on the island in 1877 (TTPrS 2013). The Carrera Island Convict Prison is currently a maximum-security institution with a design capacity of 185 inmates and a current population of 304 inmates (Khan, 2013). It is scheduled for decommissioning in 2014.

Built upon a former Royal Navy establishment near Tacarigua, the Golden Grove Prison was opened in 1947 to house 300 inmates. The prison is slightly overcrowded, housing 57 inmates beyond its design capacity of 430.

Although other prisons hold individuals remanded into custody awaiting trial and/or sentencing, the Remand Prison was designed solely to address the legal status and unique security concerns of this population. Located on the Golden Grove Prison Complex, it is extremely overcrowded with 1,081 inmates in a facility designed for 655 (Khan, 2013).

### YOUTH TRAINING CENTRE (YTC)

The Youth Training Centre (YTC) was established as the Young Offenders' Institute in 1926. In 1949, the facility was designated an industrial institution and renamed the Youth Training Centre. As was the practice in Britain and North America prior to the 1980s, the YTC holds youth declared delinquent by the courts as well as those in need of protection and supervision; this practice is currently under review and the removal of non-delinquents is expected.

### WOMEN'S PRISON COMPLEX OPENED IN 2000

The TTPrS is not unlike prison services in other countries in providing for the care and custody of females, both sentenced and remanded. Currently, there is a lower inmate population relative to the male inmate population. Most female inmates were held in cells at the St. James Police Barracks (1854-early 1960s) and in the 28-cell women's section at the Royal Gaol (1886-1989) until they were transferred to the dedicated women's building at the Golden Grove Prison Complex in 1989; this building formed the nucleus for the Women's Prison Complex opened in 2000. The separate holding of female offenders under the age of 18 years remains an ongoing concern since this is the only option for female youths requiring higher security.

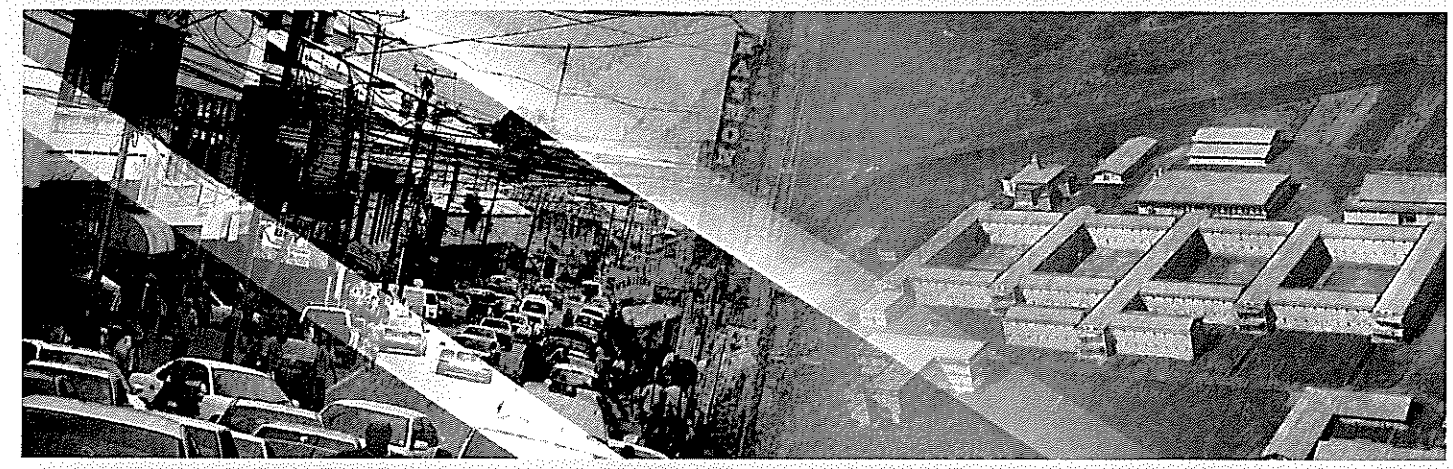
While the Tobago Prison was established in 1818 as a six-cell annex to the Police headquarters building in Scarborough, it has since evolved into a 30-bed minimum-security facility located just north of the city. Interestingly, only male offenders serving two months or less were originally held at this prison, with all females and males serving longer sentences transferred to prisons on Trinidad. The dilapidated condition of the physical structure and its lack of space to deliver programming and the hardship on Tobagoen inmates transferred to Trinidad, have resulted in calls for either its closure or, as recommended in 2002, replacement with a 210-bed, multi-purpose facility to hold male and female adults as well as young offenders.

### A MODERN PRISON SERVICE AND THE INFRASTRUCTURE NEEDS OF A GROWING PRISON POPULATION

Early post-colonial expansion included both the construction of additional prisons and the infrastructure necessary to operate a modern prison service. Like many countries, Trinidad and Tobago has also clustered a number of prisons to maximize service delivery while reducing costs. The Golden Grove Prison Complex is

**Table 1 – Overview of the Prison Facilities in Trinidad and Tobago in 2012**

| INSTITUTION | YEAR OPENED | SECURITY LEVEL | DESIGN CAPACITY | ACTUAL COUNT | | |
|---|---|---|---|---|---|---|
| | | | | CONVICTED | REMANDED | TOTAL |
| Carrera Is. Convict Prison | 1877 | Maximum | 185 | 304 | 0 | 304 |
| Golden Grove Prison | 1947 | Medium | 430 | 487 | 0 | 487 |
| Maximum Security Prison | 1990 | Maximum | 2453 | 529 | 380 | 909 |
| Port of Spain Prison | 1812 | Medium | 250 | 184 | 320 | 502 |
| Remand Prison | 1947 | Maximum | 655 | 7 | 1081 | 1088 |
| Tobago Prison | 1985 | Minimum | 30 | 17 | 26 | 43 |
| Women's Prison | 1987 | Medium | 158 | 43 | 54 | 97 |
| Youth Training Centre | 1985 | Minimum | 225 | 98 | 86 | 184 |
| | | **TOTAL** | **4386** | **1669** | **1947** | **3614** |



home to the Golden Grove Prison, Maximum Security Prison, Women's Prison Complex, and the Youth Training Centre. The Maximum Security Prison (Arouca) provides for the security needs of the increased number of violent and/or gang-affiliated inmates sentenced to incarceration. At 909 inmates, the Maximum Security Prison has far exceeded it 529-bed design capacity. The TTPrS has also developed its Prison Administration Building (Port of Spain), Prison Training College (Arima), and Prison Sports Club (Arouca) among its efforts to provide the infrastructure needs of a growing prison system.

## A REMAND CRISIS

A prison system that worked relatively well under British colonial rule from 1888 was also continued by the Republic of Trinidad and Tobago after independence in 1960. This may be seen as a continuation of the manner in which both the colonial and post-colonial TTPrS dealt with the problem of massive influxes of inmates in 1937 and 2011 as well as the practice of corporal punishment. During the labour and political unrest of 1937, a large number of individuals were incarcerated for politically-motivated, criminal acts. This influx led the TTPrS to overcrowd existing prisons and to open a short-lived prison camp on Nelson Island once prison populations reached a crisis point. The government-declared, limited state of emergency in 2011 also resulted in increased remand detention and imprisonment of large numbers of offenders. This was predominantly a remand crisis and the response of the government was to increase overcrowding in the Remand Prison with some offenders sent to the Port of Spain and Maximum Security prisons in the absence of the political will to establish new prison camps.

## CHALLENGES IN A CHANGING CORRECTIONAL ENVIRONMENT

The Trinidad and Tobago Prison Service is currently confronted by a number of challenges affecting its daily operations. First, the TTPrS is facing a remand crisis. Although the current remand population is 53.9% of the total prison population, this figure does not tell the whole story, since the Remand Prison alone is 60.2% over design capacity, with an additional 780 remand inmates contributing to the system-wide overcrowding at the Port of Spain and Tobago prisons (Khan, 2013). An extremely backlogged criminal court system combined with a lack of speedy trial legislation has resulted in individuals being held in remand custody for an average of 3.7 years (Seepersad, 2013). Some offenders accused of more serious crimes have been held on remand for up to 18 years (Seepersad, 2013), which is longer than the typical sentence for many offences.

Secondly, while the system is not 'statistically' operating at its design capacity, five of its eight prisons are overcrowded (Khan, 2013). Indeed, substandard physical conditions, such as serious overcrowding, unsanitary cells, limited prison visits, and numerous concerns relating to food (Khan, 2013) are endemic. When combined with the high rate of recidivism, these conditions indicate the need for selective incarceration of higher-risk offenders and the expansion of non-custodial alternatives for those less likely to reoffend.

Thirdly, the amount of contraband detected within the prisons nationally has increased over the past few years; the most notable items have been cell phones, cigarettes, marijuana, and weapons. This rise in the amount of contraband has led to increased assaults on prison staff, both in and outside of the prisons, job action by the Prison Officers' Association, and the establishment of a ministerial-level commission of inquiry in November, 2013. Indeed, Seepersad's (2013) study of drug use in Trinidad and Tobago prisons revealed that 54.3% of inmates had used tobacco, 49.8% had used marijuana, and 17.5% had used alcohol while in prison; the use of other drugs in prisons was negligible.

The shift from a retributive paradigm to a restorative justice paradigm is slow… facing constraints vis-à-vis social acceptance

Finally, the TTPrS has sought to shift its programming to emphasize restorative justice measures whereby inmates are taught to heal torn relationships and become stakeholders in society once released. Despite efforts on the part of the TTPrS, the shift from retributive to restorative justice as an operational paradigm has only been partially implemented. Restorative justice, however, is neither fully understood as a concept nor appreciated by either

the media or the public-at-large. Instead, they continue to adhere to the belief that acts of violent crime require incapacitation and punishment rather than restoration and reintegration.

## CONCLUSION

The prison system in Trinidad and Tobago is currently confronted with the dual challenges of: (1) long-term holding of an increasingly large number of individuals remanded into custody, and (2) providing services for a lower number of sentenced inmates in a society becoming increasing punitive in nature due to the very high crime rates.

Since the early to mid-2000s, the Trinidad and Tobago Prison Service has met with limited success in the process of reforming its organizational culture, goals and operations from a retributive to a restorative orientation. With the recent change in government and its stated support for a restorative approach, it is hoped that the Trinidad and Tobago Prison Service will achieve its goals of reforming its organization and contributing to the rehabilitation of offenders.••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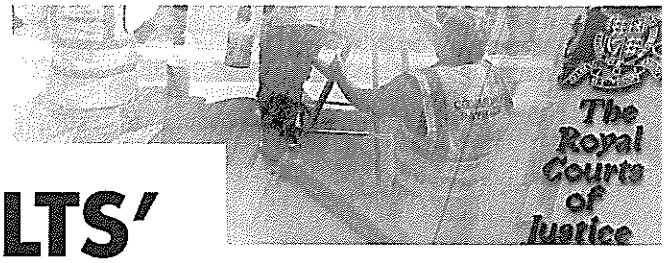
## RÉSUMÉ

**"TO HOLD AND TRAIN": THE TRINIDAD AND TOBAGO PRISON SERVICE**

**Un article de Randy Seepersad, Ph.D., Dianne Williams, Ph.D., et Allan Patenaude, Ph.D.**

Affirmant que le changement systémique au sein de la plupart des systèmes carcéraux à l'échelle mondiale se produisait à la lenteur d'un glacier et que les études oublient souvent les systèmes carcéraux postcoloniaux des petits États, les auteurs – R. Seepersad, D. Williams, et A. Patenaude – soulignent ici que cela est particulièrement vrai dans le cas de pays nés d'un processus de transition pacifique plutôt que d'une révolution. Il se pourrait que dans le cas de tels pays la transition d'État colonial à État national ne soit qu'une question de changement de titre et que tout continue de fonctionner comme auparavant. Dans le cadre de l'héritage que constitue le système carcéral colonial, les auteurs se penchent notamment sur la crise liée à la détention préventive et aux enjeux de surpeuplement des prisons auxquels doit faire face le "Trinidad and Tobago Prison Service" (TTPS) [Service des prisons de Trinité-et-Tobago]. La question qui se pose est de savoir si le TTPS est en mesure d'être fidèle à sa devise : *To Hold and Train* [détenir et former] et aux idéaux qu'elle comprend. Soulignant que le TTPS n'avait connu qu'un succès limité depuis le début du siècle au chapitre de la transformation de sa culture organisationnelle, de ses buts et de ses opérations d'une approche axée sur le châtiment à une approche réparatrice, les auteurs disent fonder de l'espoir sur le nouveau gouvernement qui a affirmé appuyer une approche réparatrice.




# 'PAYMENT BY RESULTS' IN THE CRIMINAL JUSTICE SYSTEM IN ENGLAND & WALES

**BY PHILIP WHITEHEAD & GEORGIOS A. ANTONOPOULOS,** School of Social Sciences & Law, Teesside University, UK

## INTRODUCTION

Through its application to the criminal justice sector, payment-by-results (PbR) is the new method by which the UK government is completely reconfiguring the criminal justice system (among other public service such as health and welfare) in England and Wales (2010 to 2015). Under a payment-by-result approach, providers are paid the profit component of their total cost only if predetermined rates of reduced offending are achieved.

PbR is a historically embedded politico-fiscal instrument with functional similarities to the private finance initiative (PFI) in the utilization of private capital to fund the 're-formation' of public services in the UK. Although PFI is mainly concerned with building and running physical facilities in the UK (hospitals), and PbR the delivery of services and other social interventions, both PFI and PbR are indicative of private sector involvement in facilities and services (http://www.economist.com/blogs/blighty/2012/07/payment-results-and-community-sentences).

PbR is thus premised on a platform of transferring the financial risks from the state-treasury-taxpayer to commercial investors primarily within the private (and potentially voluntary) sector. The surface appeal of PbR is that it offers service providers located within the public, private, and voluntary sectors, the freedom and/or the necessity to innovate, because remuneration is contingent upon specified contractual outcomes being delivered successfully.

## 'RE-FORMATION' OF ORGANIZATIONAL FUNCTIONS AND THEIR RATIONALE

The 're-formation' of public sector institutions currently taking place in England and Wales is more penetrating than had been the case since the initial bout of privatizations during the 1980s. The initiative accords with principles of de-centralization, greater choice, and *contestation* (another name for competition) between the public, private, and voluntary sectors. Collectively, the 're-formation' is underpinned by greater fiscal accountability in an era of limited financial resources.

## PRISONS WITH A PURPOSE

The current competitive and marketized approach to reforming the criminal justice system is far from novel because it has constituted a salient feature of the UK National Offender Management Service (NOMS) since 2003. In addition to reducing cultural divides between prisons and probation services, the NOMS facilitated a concerted move in the direction of competition between the public, private, and voluntary sectors for the delivery of criminal justice services that has culminated in a 'payment-by-result' approach (https://www.gov.uk/government/policies/reducing-reoffending-and-improving-rehabilitation - *Reducing reoffending and improving rehabilitation* (Home Office and Ministry of Justice 2013). This theme subsequently resonated with the Conservative Party's green paper, March 2008, *Prisons with a Purpose*, which advocated a rehabilitation revolution through a root-and-branch reform of the entire delivery platform, which would require much greater involvement of the private and voluntary sectors through incentives provided by the PbR fiscal mechanism.

## BREAKING THE CYCLE

Several months after the Conservatives and Liberal Democrats forged their coalition government in May 2010, its green paper, *Breaking the Cycle*, persisted with the rehabilitation revolution by consolidating ideas for the creation of an internal market for criminal justice. The primary objective of criminal justice reforms is to reduce crime and re-offending by establishing a diverse market of providers who will be incentivized towards innovation by the fact that payment/profit is impacted by the results they achieve. Accordingly, the rationale for the delivery of offender services is no longer founded on hoped-for outputs (i.e., less re-offending) but on financial payment for services rendered based on the relative success of measurable outcomes (e.g., clear, demonstrable, and quantifiable results, i.e, less-reoffending). Consequently the intention is to "open up the market to new providers from the private, voluntary and community sectors. By 2015, we will have applied the principles of this approach to all providers".[1] Since the above-mentioned 2008 green paper was later consolidated by the UK Ministry of Justice in 2010, the rehabilitation revolution continues to advance.

## MODELS OF PBR UNDER CONSIDERATION

The lunch-time conversation at the conference hosted by Policy Exchange on March 4, 2013 centred on the PbR implications of

[1] Ministry of Justice (2010) *op cit.*, p.10

THE STUDENT SPACE
L'ESPACE ÉTUDIANT

# SOME OBSERVATIONS ON THE ENFORCEMENT OF INTERNATIONAL SENTENCES IN THE CASE OF THE ICTY

**BY FILIP VOJTA,** LL.M., Max Planck Institute for Foreign and International Criminal Law, Freiburg i. Br., Germany

## INTRODUCTION

Being a successor to the Nuremberg and Tokyo tribunals, the ICTY (International Criminal Tribunal for the Former Yugoslavia) has over the years had a significant impact on the international criminal justice system. This is notable not only at a level of imposing sentences for atrocity crimes (e.g., genocide, crimes against humanity and war crimes), but also because the Tribunal introduced a distinctive enforcement mechanism, which to a large extent requires the assistance of individual states for the incarceration of international prisoners. This enforcement mechanism was subsequently adopted by other international tribunals (Rwanda and the ICC – International Criminal Court), as well as the recently activated MICT (Mechanism for International Criminal Tribunals).

The enforcement mechanism for the ICTY, which enforces and detains the highest number of incarcerated international criminals, raises certain penological issues that bear exploration and that can help clarify some of the practical problems currently inherent in the enforcement of international sentences.

## THE ENFORCEMENT SYSTEM FOR INTERNATIONAL PRISONERS

Given the absence of an international prison system, the ICTY has to negotiate enforcement agreements with individual states in order imprison its convicts within national prison systems. To date, agreements have been made with 17 European countries and 49 prisoners have been effectively incarcerated in 13 of them. The Statute explicitly gives supervision over the enforcement to the Tribunal, thus theoretically ensuring that the international character and retributive nature of the sentence are being upheld. In practical terms, however, the function, extent and impact of this supervision remain unclear, especially considering that states have, through their respective agreements, been able to make a number of adjustments to their own prison policies as regards the terms of incarceration of international criminals.

## ISSUES UNDER SCRUTINY – A CONFLICT OF PURPOSES IN STATE PRISON SYSTEMS VIS-A-VIS ICTY SENTENCING PRINCIPLES FOR INTERNATIONAL PRISONERS

Under the influence of international and regional human rights law, many national prison systems have adapted progressive goals of rehabilitation and re-socialization for the treatment of domestic prisoners (especially in Europe; see Snacken & Van Zyl Smit, 2009). This can be deemed as conflicting when it comes to retribution (Jäger, 1995) and deterrence, which have been generally accepted as the principle purposes of punishment through the ICTY's sentencing practice.

Considering that rehabilitation is oriented towards "curing" an offender of criminal tendencies (Ashworth & von Hirsch, 1992), this approach might fall short in the case of war-criminals and genocidaries - persons bearing responsibility for the biggest atrocities imaginable, but who, paradoxically, do not express "excessive" crime etiology, nor do they resemble the etiology of "ordinary" criminals. Being high-ranking state or military officials with good education, strong internal discipline and high social skills, they do not deviate from the policy of their state but act in conformity with it, thus lacking a sense of criminal identity (Harrower, 1976). One could argue they are already re-socialized. Moreover, given that their crimes are committed within a distinctive framework of a conflict which is limited in time (e.g., Yugoslav wars) they cannot be considered career criminals who would afterwards pose a clear threat to their immediate environment.

This conflict of purposes raises the question about finding a right approach in the prison treatment of international criminals. For example, which approach would be both adequately punishing, thus adhering to the aims of retribution and general deterrence, while at the same time maintaining basic respect for human dignity as defined by international and regional prison standards. Since international prisoners serve their sentences in different states, it would require a necessary level of standardization in accordance with the principle of equal justice and treatment. In practice, however, the approaches can greatly vary depending on the state.

The relative absence of standardized approaches to the treatment of international prisoners is illustrated in the following two examples:

> Biljana Plavšic, a former Bosnian Serb leader convicted of crimes against humanity, served her sentence in a plush Swedish prison which boasts a sauna, solarium, horse-riding paddock and offers inmates classes in salsa-dancing and photography. Radislav Krstic, a high-ranking military official in Bosnian Serb Army, was incarcerated in England, in the maximum-security Wakefield prison famously dubbed "the monster mansion" due to its high-profile inmates, where he suffered a violent attempt on his life.

In the case of states having a federative structure, this could complicate things even more because the enforcement of imprisonment lies is in the capacity and proficiency of its federal states. For example, the Federal Republic of Germany has not signed a general agreement but it has entered into different agreements for each of the four prisoners who were incarcerated in four of the member states. The fact that states are usually the ones who bear the cost of incarceration can also hypothetically diminish the efforts of actually developing a penologically valid, standardized approach on the national level to the treatment of international prisoners.

When it comes to the outcome of enforcement, the ICTY (having the authority over questions of pardon, commutation of sentence and early release) has, as a rule, applied the practice of early release to every prisoner whose time spent in prison amounted to two-thirds of the sentence served, thus indicating that "treatment of similarly situated prisoners" is the prevalent criteria in this matter. Considering the other factors such as the gravity of crime(s) committed, the issue of achieved rehabilitation (rather dubious criteria when it comes to international criminals, as indicated above) and general lack of cooperation by prisoners with the Tribunal, one can question the rationale behind these decisions not only in terms of justice but the implications they might have for the sides involved in the conflict.

The fact that released prisoners tend to eventually return to their home state where they are often accepted as heroes upon arrival certainly indicates lack of stigmatization inherent to the institution of criminal punishment by an international court. Furthermore, when this is preceded by short-term sentences served in relatively comfortable surroundings, the concerning question is raised: Are we implementing neutral punishments? This 'approach' could also be seen to greatly detract from the reconciliatory efforts of the conflicting states, which is certainly an unwelcome outcome since "the contribution to restoration and maintenance of peace" is precisely one of the most important principles under which the ICTY operates.

## *CONCLUSION*

The enforcement mechanism for the ICTY, which enforces and detains the highest number of incarcerated international criminals, raises certain penological issues that bear exploration and can help highlight some practical problems currently inherent in the enforcement of international sentences.

The issues discussed in this article are associated with the research agenda of my Ph.D. project entitled "Punishment and Sentence Serving for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia". The question of purpose in enforcing international sentences, using a penologically justifiable and standardized approach that identifies appropriate treatment of international prisoners, should be addressed in order to achieve a specific and valid outcome. The development of a standardized enforcement mechanism is of considerable relevance to supporting the aims and legitimacy of an international criminal justice system, especially in the light of the developing mandate of the ICC which has the majority of enforcement-agreements signed with European states and which recently had its first sentence passed. It can be presumed that future practice (of the ICC) will increasingly depend on appropriate assistance of national states in the enforcement of its sentences. The extensive experience gained through the implementation of the ICTY's enforcement mechanism as discussed in this article creates fertile ground for a systematic empirical inquiry into the issue of enforcement. This approach reaps "lessons-learned" (from the ICTY's system) and also serves as a valid point of reference for potential future improvement.••

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## RÉSUMÉ

**SOME OBSERVATIONS ON THE ENFORCEMENT OF INTERNATIONAL SENTENCES IN THE CASE OF THE ICTY**

**Par Filip Vojta, LL.M., Max Planck Institute for Foreign and International Criminal Law, Freiburg i. Br., Allemagne**

Cet article nous présente une discussion éclairée au sujet du Tribunal pénal international pour l'ex-Yougoslavie en mettant en lumière certains enjeux liés au projet de recherche de l'auteur aux fins de son doctorat, un projet intitulé "Punishment and Sentence Serving for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia" [le châtiment et les peines à purger pour des violations graves des lois humanitaires internationales, commises dans l'ex-Yougoslavie]. Partant de deux résumés de dossiers, Vojta démontre que l'absence d'un système carcéral international contribue à contrecarrer la mise en œuvre d'approches de traitement standardisées des détenus internationaux (du fait qu'on doit compter sur divers systèmes nationaux). Pour illustrer la problématique de l'approche actuelle non standardisée, l'auteur réfère au cas de Biljana Plavšic, une ex-leader serbe de la Bosnie, trouvée coupable de crimes contre l'humanité. Celle-ci a purgé sa peine dans une somptueuse prison suédoise, dotée d'agréments, tels qu'un sauna, un enclos d'équitation, des cours de salsa et de photographie pour les détenues. Le deuxième exemple est celui de Radislav Krstic, un militaire haut-gradé de l'armée serbe de la Bosnie, qui a été incarcéré en Angleterre, à l'établissement à sécurité maximale de Wakefield, surnommé "monster mansion" [manoir des monstres] en raison des détenus notoires qui s'y trouvent. Vojta fait ressortir l'absence de stigmatisation qui devrait normalement découler de l'imposition d'une peine criminelle par un tribunal international, soulignant que cela diminue considérablement les efforts de réconciliation entre les États en conflit. Se disant favorable à la mise en place de mécanismes d'exécution standardisés, destinés à soutenir les buts et la légitimité d'un système de justice pénale international, notamment en regard de l'élaboration du mandat de la Cour pénale internationale, Vojta affirme que le fonctionnement futur de cette Cour dépendra de plus en plus d'une aide adéquate provenant d'États nationaux pour assurer l'exécution des peines qu'elle impose.

# COMING EVENTS
# PROCHAINS ÉVÉNEMENTS

(Published in the language submitted / Publiés dans la langue dans laquelle ils sont soumis)

## SAVE THE DATE! • INSCRIVEZ LA DATE À VOTRE CALENDRIER!

APRIL 12-19 AVRIL 2015

**13th UNITED NATIONS CONGRESS ON CRIME PREVENTION & CRIMINAL JUSTICE**
**13e CONGRÈS DES NATIONS UNIES POUR LA PRÉVENTION DU CRIME ET LA JUSTICE PÉNALE**

**THEME:** Integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation

**THÈME :** L'intégration de la prévention de la criminalité et la justice pénale dans la stratégie plus large de l'Organisation des Nations Unies, pour faire face aux problèmes sociaux et économiques et pour promouvoir l'état de droit aux niveau national et international et la participation du public.

**PLACE:** Doha, Qatar

**INFO:** www.unodc.org/unodc/en/crime-congress/13-crime-congress.html

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13–15 JUNE, 2014

**15th INTERNATIONAL CONFERENCE ON PENAL ABOLITION (ICOPA 15)**

**THEME:** Resisting Carceral Nation States: Building Awareness, Developing Strategy, Taking Action

**PLACE:** University of Ottawa / Algonquin Territory / Ottawa, Ontario, Canada

**INFORMATION:** icopa.canada@gmail.com / www.actionicopa.org

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27-29, JUNE, 2014

**THE 6th ANNUAL CONFERENCE OF THE ASIAN CRIMINOLOGICAL SOCIETY**

**THEME:** "Advancing Criminological and Criminal Justice Theories from Asia"

**PLACE:** Osaka, Japan

**INFORMATION:** www.acs2014.com; the Society Official Website is www.acs001.com.
The conference Organization committee Chair Professor Ichiro Tanioka and President of Asian Criminological Society Professor Jianhong Liu welcome you to come to attend our conference to meet colleagues around the world.

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5-9 JULY, 2015

**15th INTERNATIONAL SYMPOSIUM OF THE WORLD SOCIETY OF VICTIMOLOGY**

**THEME:** Justice for Victims: Cross-cultural perspectives on conflict, trauma and reconciliation…

**PLACE:** Perth Convention and Exhibition Centre, Perth, Western Australia

**INFORMATION:** https://www.eiseverywhere.com/ehome/victimology2015/lf

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10-12 JULY, 2014

**BRITISH SOCIETY OF CRIMINOLOGY CONFERENCE**

**THEME:** Crime, Justice, Welfare: Can the Metropole Listen?

**PLACE:** The University of Liverpool's Foresight Centre

**INFORMATION:** icopa.canada@gmail.com / www.actionicopa.or

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10-14 AUGUST, 2014

**THE XVII WORLD CONGRESS OF CRIMINOLOGY 2014 — INTERNATIONAL SOCIETY FOR CRIMINOLOGY**

**THEME:** Gangs, Trafficking and Insecurity: Empowering the Community

**PLACE:** Monterrey, Nuevo León, Mexico CINTERMEX Congress Center

**INFORMATION:** www.criminology2014.com

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10-13 SEPTEMBER, 2014

**14th ANNUAL CONFERENCE OF THE EUROPEAN SOCIETY OF CRIMINOLOGY**

**THEME:** Gangs, Trafficking and Insecurity: Empowering the Community

**PLACE:** Prague, Czech Republic

**INFORMATION:** www.criminology2014.com

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5-8 OCTOBER, 2014

**2nd INTERNATIONAL CONFERENCE ON LAW ENFORCEMENT & PUBLIC HEALTH (LEPH2014)**

**THEME:** Critical Perspectives: Criminology and Social Justice

**PLACE:** Free University of Amsterdam, Amsterdam, Netherlands

**INFORMATION:** info@cleph.com.au

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26-31 OCTOBER, 2014

**16th INTERNATIONAL CORRECTIONS & PRISON ASSOCIATION (ICPA)** Hosted by Namibian Correctional Service

**THEME:** This conference will focus on incarceration to reintegration: change with a purpose.

**PLACE:** Windhoek, Namibia

**INFORMATION:** http://www.icpa.ca/news/1512

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Veuillez envoyer les annonces pour vos événements au ccjapubsacjp@gmail.com nous permettant ainsi de les inscrire dans la liste des «**Prochains événements**».

## THE GIFT OF GIVING... A TRUE STORY - CANADA

With the promise of spring in Canada we are reminded of fresh starts and new opportunities. This phenomena inspires offenders as well, as they hope for the opportunity to make a responsible contribution to society and gain the support of responsive citizens. The following heart-warming account illustrates how two offenders gained acceptance and a group of citizens grew in awareness and understanding. I thought it a tale worth sharing. - John Braithwaite

# COMMUNITY ACCEPTANCE AND RE-ENTRY OF EX-OFFENDERS: WHAT THE "CORRECTIONAL PROCESS" IS ALL ABOUT...

A true story by Keith Fairbank - retired Institutional Parole Officer, C.S.C.... now Community Volunteer

It began when the minister of the church requested a volunteer to escort an inmate from a local minimum security prison to the church service every Sunday. A retired employee of the Correctional Service of Canada, who had conducted many escorted passes for inmates from prison, volunteered. A phone call to the prison chaplain arranged an interview with the inmate to assess the sincerity of his request to attend church. His name was Dave and he was serving a life sentence. He had attended a church of the same denomination in his home community before his arrest. Dave had been on work release via escorted passes for several months. He was out of the institution every weekday, a fact which gave sincerity to his request to attend church. As soon as the paper work for a pass could be completed and approved by the appropriate authority, Dave attended his first church service in the community.

The church is a small church with an attendance of between 40 and 60 people depending on the time of year and the weather. There is a coffee hour after the Sunday service and most people who attend the service participate in the coffee hour. During the first few weeks Dave stayed close to his escort during the coffee hour. People began to learn that he was an inmate. It didn't seem to make any difference. In fact some people spoke to Dave out of curiosity and found him to be an average person. Others spoke to him because their friends spoke to him. Soon Dave no longer needed to stay near his escort and was busy talking to people on his own.

A request was received from the prison chaplain to escort another prisoner to church. Another assessment interview was arranged. This inmate was also serving life but had attended a different church denomination on the street. Once this inmate's name was known, a check was made with Dave to see if they got along together. Arguments between them while in the community could be problematic. Dave had no objections to this inmate, and this new inmate seemed to be sincere in his desire to attend church.

The second inmate's name was also Dave and the people of the church soon dubbed them Dave #1 and Dave #2. At the end of coffee hour there was always clean-up to do and, no matter which people of the church were responsible for providing the snacks, Dave #2 always helped with the clean-up. Being a small congregation with the costs of a full-time minister, the church depends on fundraising to make financial ends meet. Church suppers were a major source of income and soon church members learned that Dave #1 was halfway through his training as a chef. He was soon in demand to help with the church suppers. "The boys" as they were called, soon became accepted and respected as being part of the church family. On many Sundays, at the end of coffee hour, their escort would be ready to leave, but didn't mind waiting while Dave #1 discussed food planning for the next church supper and while Dave #2 finished washing the dishes.

"The boys" attended church every Sunday and helped with fundraising when appropriate. Family obligations of the escort sometimes interfered with escorting duties, and so two other men volunteered to be trained as escorts. One male church member asked Dave #1 if he would teach a cooking class for some of the men in the church. Everything went smoothly until the administration of the carceral institution changed at the same time as the request for Dave #1 to teach the cooking course was submitted. The new warden wanted all escorted passes reviewed. The institution decided that when "the boys" were helping with fundraising functions they were doing community service. Unfortunately, the church had not been approved as a community service site. It appears the staff member who issued the passes had assumed that church attendance was church attendance no matter which day of the week.

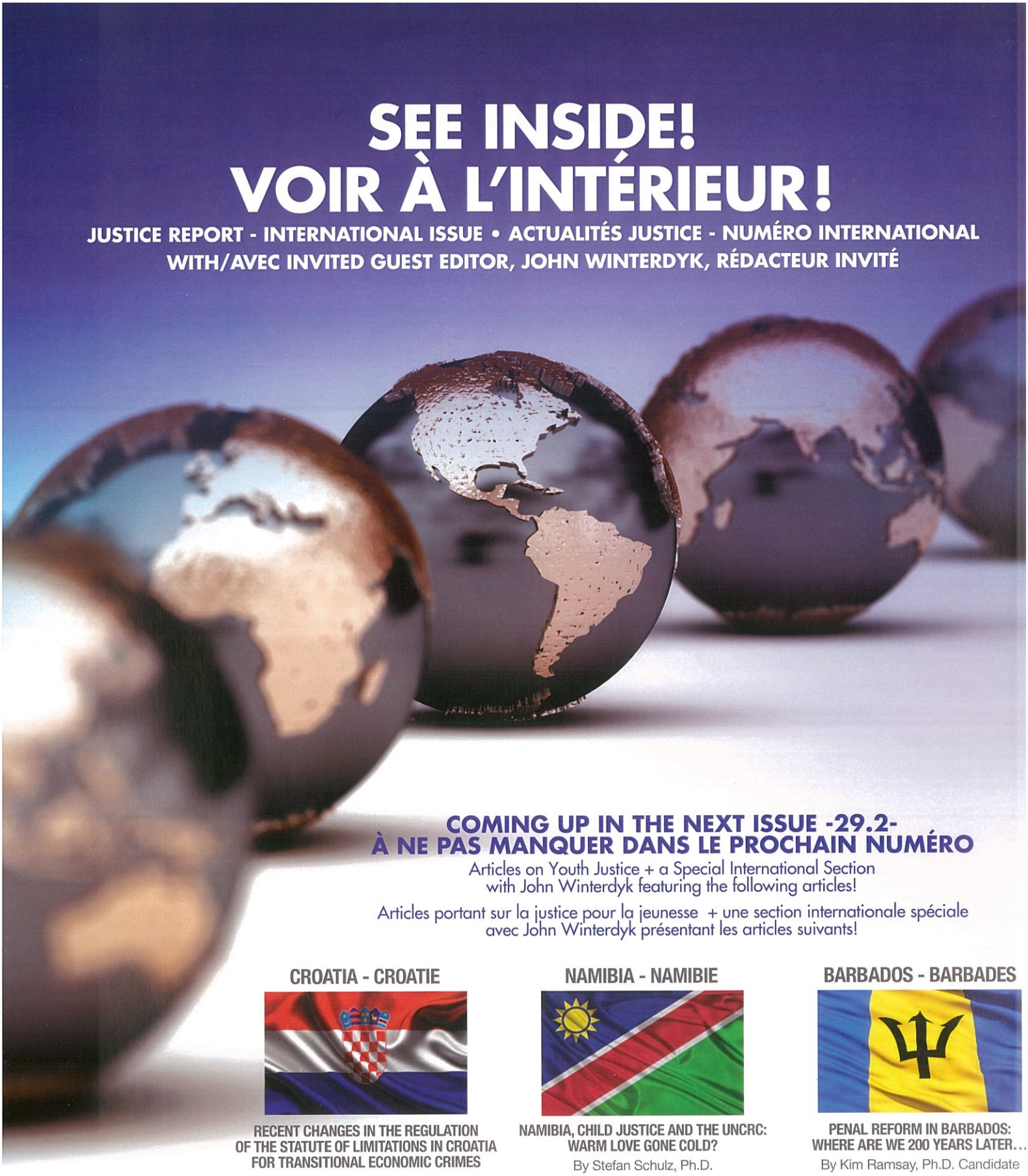
It took considerable time on the part of the institution and some effort on the part of the church to get the church approved as a community service site. The president of the women's association responsible for the church suppers wrote a letter to the institution requesting the service of "the boys" in which she described them as having become "part of the church family". The church was approved as a community service site just in time for the church Christmas dinner. Dave #1 deboned about 12 turkeys and church members successfully served Christmas dinner to over 200 people. Dave #2 was granted an unescorted 60-day pass to a halfway house in another city in preparation for a longer, more permanent release on day parole. A member of the church volunteered to drive him to the halfway house.

Dave #1 has been requested to help with a roast beef dinner and a pancake breakfast. Thus the process of community acceptance and integration goes on and the people of the church look forward to Dave #2 returning to the church in March. These two men are both serving life sentences and will be under some form of sentence for the rest of their lives. They are the type of inmates the public has been taught to fear the most, inmates serving life. Yet the people of the community who have met them and got to know them have no fear of them. Before Dave #2 left on his 60-day pass several women (all seniors) lined up to give him a fond farewell as he was leaving the church. This is what the "Correctional Process" is all about - community acceptance and community integration.

This account, reflecting principles of reintegration and restorative justice, illustrates the importance of community involvement in the re-entry process - one in which offenders gain acceptance and citizens gain greater awareness. Not only did Dave I achieve acceptance, gain confidence, and make friends in an entirely new social group, he also got experience in his new profession as a chef! Dave II proved himself to be a helpful and considerate fellow, assisting with clean up and making many friends at the church. The people from the church, who interacted and helped "the boys", also learned something... that change is possible, and that offenders, especially lifers, can return as responsible, productive members of society.

# SEE INSIDE!
# VOIR À L'INTÉRIEUR!

**JUSTICE REPORT - INTERNATIONAL ISSUE • ACTUALITÉS JUSTICE - NUMÉRO INTERNATIONAL**
**WITH/AVEC INVITED GUEST EDITOR, JOHN WINTERDYK, RÉDACTEUR INVITÉ**



## COMING UP IN THE NEXT ISSUE -29.2-
## À NE PAS MANQUER DANS LE PROCHAIN NUMÉRO

Articles on Youth Justice + a Special International Section
with John Winterdyk featuring the following articles!

Articles portant sur la justice pour la jeunesse + une section internationale spéciale
avec John Winterdyk présentant les articles suivants!

### CROATIA - CROATIE



**RECENT CHANGES IN THE REGULATION OF THE STATUTE OF LIMITATIONS IN CROATIA FOR TRANSITIONAL ECONOMIC CRIMES**

By Sunčana Roksandić Vidlička
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Assistant Lecturer at the University
of Zagreb Faculty of Law, Croatia

**NEW CROATIAN CRIMINAL PROCEDURE ACT – EUROPE SAYS "YES", BUT THE CONSTITUTIONAL COURT SAYS "NO"**

By Zoran Burić, Ph.D. Candidate
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of Zagreb Faculty of Law, Croatia

### NAMIBIA - NAMIBIE



**NAMIBIA, CHILD JUSTICE AND THE UNCRC: WARM LOVE GONE COLD?**

By Stefan Schulz, Ph.D.
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Justice and Legal Studies,
Polytechnic of Namibia
Windhoek, Namibia

### BARBADOS - BARBADES



**PENAL REFORM IN BARBADOS: WHERE ARE WE 200 YEARS LATER…**

By Kim Ramsay, Ph.D. Candidate
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and Social Work
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